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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 159.

FRANK SHAW AND DAVID S. GREENOUGH, JR., APPELLANTS,

vs.

THE LITTLE ROCK AND FORT SMITH RAILWAY, THE LITTLE ROCK AND FORT SMITH RAILROAD COMPANY, CHARLES W. HUNTINGTON AND SAMUEL H. GOOKIN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

FILED AUGUST 4, 1877.

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INDEX.

	Original.	Print.
Bill	1	1
Summons	12	8
Demurrer of Little Rock and Fort Smith Railroad	16	9
Demurrer of Huntington et al., trustees	19	11
Decree	19	11
Appeal	19	11
Exhibit, transcript in cause, No. 138	21	12
Exhibit A, mortgage	43	23
Amended bills	52	33
Petitions	56	35
Clerk's certificate	80	48

1 UNITED STATES OF AMERICA,

Eastern District of Arkansas:

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the twelfth day of April, anno Domini one thousand eight hundred and sixty-five, at the United States court room in the city of Little Rock, Arkansas, the honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit:

On July 6 (sixth), one thousand eight hundred and seventy-five, come the complainants by Brown and Ford, esquires, their solicitors, and file herein their bill of complaint, and on motion of said solicitors it is ordered that a writ of subpœna issue herein, returnable on the second day of August next, which is accordingly done. Which bill in the words and figures following, to wit:

In the circuit court of the United States for the eastern district of Arkansas.

FRANK SHAW ET AL.
vs.
LITTLE ROCK AND FORT SMITH RAILWAY et al.

To the judges of the circuit court of the United States for the eastern district of Arkansas, sitting in chancery:

Frank Shaw and David S. Greenough, jr., citizens of the State of Massachusetts, bring this their bill of review against the Little Rock and Fort Smith Railway, a corporation organized under the laws of the State of Arkansas; the Little Rock and Fort Smith Railroad Company, a corporation organized under the laws of the State of Arkansas; Charles W. Huntington and Samuel H. Gookin, citizens of the State of Massachusetts, and, thereupon complaining, show unto your honor that on the twelfth day of May, one thousand eight hundred and seventy-four, one Henry W. Paine filed and exhibited in this honorable court his original bill of complaint against the defendant the Little Rock and Fort Smith Railroad Company (and others who are not made parties hereto and whose names it is unnecessary to mention), by which he alleged and showed to the court that to secure an issue of its bonds of the number and amount of three thousand five hundred bonds for one thousand dollars each, which bonds it there intended to issue and sell the defendant, the Little Rock and Fort Smith Railroad Company by its deed December twenty-second, one thousand eight hundred and sixty-nine, conveyed all its line of railroad which it was authorized to construct from Little Rock to Fort Smith, including all the railways, branches, ways, rights of way, all tracks, wood houses, water stations, machine shops, and all other buildings and structures with the land appurtenant to the same, and all locomotives, tenders, cars, and other rolling stock or equipment and all machinery, tools, implements, fuel, materials, and all other personal property of every nature, kind, and description whatsoever, then owned or thereafter to be acquired; also all the franchises connected with or relating to said railroad or branches, and also all the franchises, rights, and things then held or thereafter to be acquired by the grantor, together with all the tenements, hereditaments, and appurtenances to the said granted property belonging or appertaining, and the reversions, remainders, tolls, incomes, revenues, rents, and profits,

excepting and reserving, however, the lands granted to said grantor by the Congress of the United or by the State of Arkansas, and lands granted to the grantor in payment for subscriptions to its capital stock to him the said Henry W. Paine and to one Samuel T. Dana,
2 in trust to sell and convey on default of the said Little Rock and Fort Smith Railroad Company to pay the interest and principal of said bonds.

By his said bill of complaint said Paine farther showed that said Samuel T. Dana resigned his trusteeship on the thirteenth day of May, one thousand eight hundred and seventy one, and that by the provisions of said deed he was authorized as remaining trustee to execute the trust thereof, and that by said deed it was provided that in case default should be made in the payment of any half-year's interest at the time and in the manner provided in the coupons, the said coupons having been presented and the payment of the interest therein specified having been demanded, and if such default should continue for the period of three months after such coupon should have become due and been demanded as aforesaid, then and thereupon the principal of all the bonds should at the election of said trustees become immediately due and payable. A copy of said mortgage was exhibited with said bill and with all its provisions was made a part thereof.

By the fifth paragraph of his said bill of complaint said Paine averred that the said Little Rock and Fort Smith Railroad Company had made default and failed to pay the coupons on said bonds maturing January first, one thousand eight hundred and seventy-one, July first, one thousand eight hundred and seventy-one, January first, one thousand eight hundred and seventy-two, July first, one thousand eight hundred and seventy-two, January first, one thousand eight hundred and seventy-three, July first, one thousand eight hundred and seventy-three, and January first, one thousand eight hundred and seventy-four, "notwithstanding the coupons due and payable on many of said bonds on January first, one thousand eight hundred and seventy-one, and July first, one thousand eight hundred and seventy-one, were presented for payment, and the payment of the interest therein specified was duly demanded." That one hundred miles of the road was completed;
3 that said company had issued all said bonds "as well as all issued under and secured by a mortgage executed upon the land granted to said company"; that said company was and *and* had long been notoriously and hopelessly insolvent; that it was being operated at a loss and that it could not be profitably operated unless completed and extended to Fort Smith; that to aid in the construction of the railroad the Congress of the United States had granted to the State of Arkansas and the State had granted to said R. R. Co. ten sections of land to the mile; that the said land grant would be forfeited unless an additional section of twenty miles should be completed by May thirteenth, one thousand eight hundred and seventy five; that the road required repairs, and that said trustee had elected that the principal of said bonds should become and be immediately due and payable.

By the sixth paragraph of said bill said Paine farther showed that prior to the execution of said deed said railroad company, under the provisions of an act of the legislature of the State of Arkansas granting State aid to railroads, applied for and obtained a grant of aid to the amount of one million dollars; that the coupons of the State aid bonds issued to said company maturing October first, one thousand eight hundred and seventy, April first, one thousand eight hundred and seventy-one, October first, one thousand eight hundred and seventy-one, April

first, one thousand eight hundred and seventy-two, October first, one thousand eight hundred and seventy-two, April first, one thousand eight hundred and seventy-three, October first, one thousand eight hundred and seventy-three, and April first, one thousand eight hundred and seventy-four, were unpaid, and submitted whether the amount of such coupons and bonds were a prior lien or the income of said company. Said bill of complaint made parties defendants of various persons who had obtained judgments against said railroad company and made allegations as to them not necessary to be here mentioned, and prayed

4 that all the property so conveyed might be sold subject to the lien of the State of Arkansas, if any such lien existed, and that until a sale could be effected a receiver might be appointed with powers to borrow money and operate and repair said road and build so much thereof as would be necessary to save such land grant from forfeiture and for foreclosure of the equity of redemption of said mortgage.

Your orator further shows that on October third, one thousand eight hundred and seventy-four, by leave of this court, the plaintiff amended said complaint by striking out all of the fifth paragraph or division except the last paragraph, and by inserting in lieu thereof and as the fifth paragraph, certain words by which he showed that for the purpose of aiding in the construction of said road the United States granted to the State of Arkansas and the State granted to said Little Rock and Fort Smith Railroad Company ten sections of land to the mile. That on June twentieth, one thousand eight hundred and seventy, the said company conveyed the land so granted to Henry W. Paine, Samuel T. Dana, and William B. Stevens in trust to secure the payment of five thousand bonds of one thousand dollars each, issued by said company. That said Paine, Stevens, and Dana had all resigned their trusts, and that C. W. Huntingdon, S. H. Gookin, and Elisha Atkins had been duly appointed in their stead and had accepted said trust. That the holders of the bonds issued under said last named mortgage were very numerous, but that certain parties named, and whose names will be mentioned in the next paragraph hereof as having by amendment made parties of defendants, were among the largest bondholders and fit representatives of the rest. That the comp'ny had issued the whole amount of the bonds secured by the last named mortgage and had made default and failed to pay the coupons attached to said bonds, and also the coupons on the railroad mortgage from January first to the present time and that the company owes such interest to the holders of each class of said bonds, amounting to over one hundred thousand *thousand* dollars. That the

5 company was insolvent; that but one hundred miles had been constructed; that the U. S. Government had issued patents to said company for the lands on said one hundred miles; that unless a section of twenty miles was completed by May thirteenth, one thousand eight hundred and seventy five, another twenty miles by May thirteenth, one thousand eight hundred and seventy-six, and the whole road by July twenty-eighth, one thousand eight hundred and seventy-six, that "in the judgment of persons competent to form an opinion" by far the more valuable part of the grant would be forfeited. That said railroad was operated at a loss and needs repairs, and that said railroad from Clarksville to Argenta is practically no security for the bonds issued under said railroad mortgage, and that if finished at a cost of one million five hundred thousand dollars it would be a more valuable security for said bonds, even though such additional cost should be a prior lien on the whole road to the railroad mortgage, and that a receiver should be appointed, money borrowed, and said road completed. Said bill was

also amended by inserting that the holders of the railroad mortgage were very numerous, and the prayer of said bill was amended relative to powers asked for the receiver when appointment was prayed.

Your orators farther show that on the same day, October third, one thousand eight hundred and seventy-four, said bill was farther amended by substituting C. W. Huntingdon and Samuel H. Gookin, complainants, instead of Henry W. Paine, resigned as aforesaid, and by making Elisha Atkins in his capacity of trustee of the land mortgage, Elisha Atkins, Benjamin E. Bates, Ebenezer T. Farrington, Francis M. Weld, Henry Salstonstall, John Gardner, Thomas H. Parkins, and Daniel D. Stackpole, all of the city of Boston and State of Massachusetts, parties defendant.

Your orators farther show that the Little Rock and Fort Smith Railroad Company interposed no defense to said bill, and that on the sixth day of November, one thousand eight hundred and seventy-four, the cause was heard on the bill taken as confessed against said company; and on that day (the defendants above last named consenting) it
6 was decreed that unless the defendants would pay the whole principal of said bonds, three million five hundred thousand dollars, and all interest due thereon, on or before the tenth day of December, one thousand eight hundred and seventy-four, sell the property in said railroad mortgage described to the highest bidder for cash, and that all the bonds secured by said deed should be filed in the office of the master for participation in the fund in accordance with a scheme to be devised for that purpose.

Your orator further shows that on the nineteenth day of December, one thousand eight hundred and seventy-four, said master filed his report showing that he had sold the whole of said property to George O. Shattuck, Francis M. Weld, and George Ripley for fifty thousand dollars. That on the same day said purchasers filed in court their affidavit stating that they had in making said purchase acted as the agents of parties whose names appeared in a schedule appended to said affidavit, one of whom as appears thereby was Samuel H. Gookin, who was one of the trustees in said deed at the time, and further stating that the' purchased said property for and in the interest of all holders of bonds secured by the foreclosed mortgage. And thereupon the said trustees, Huntingdon and Gookin, consenting thereto, it was decreed that said sale be confirmed and that (on request of the purchasers) said property be conveyed to defendant, The Little Rock and Fort Smith Railway, upon the stipulation that the said Shattuck, Weld, and Ripley immediately proceed to organize a corporation under an act of the general assembly of the State of Arkansas, approved December ninth, one thousand eight hundred and seventy-four, entitled "An act supplementary to an act to provide for a general system of railroad incorporation, approved July twenty-third, one thousand eight hundred and sixty-eight," which said corporation shall own, hold, and manage the property conveyed under the aforesaid sale, as well as the lands and property to be conveyed under the sale held by virtue of the decree rendered on the sixth day of
7 November last past, in the suit of Charles W. Huntingdon, Samuel H. Gookin, and Elisha Atkins, trustees, vs. The Little Rock and Fort Smith Railroad Company et als., number one hundred and thirty-nine upon the docket of this court, and that any holder of the bonds secured by the mortgage foreclosed in this suit, as well as the bonds secured by the mortgage foreclosed by the aforesaid suit, numbered one hundred and thirty-nine, shall upon the transfer of his bonds and his right to any of the proceeds of the sales of the railroad or land grant

under the aforesaid decrees in said suits numbered one hundred and thirty-eight and one hundred and thirty-nine, within sixty days from date of such organization, unless further time is given by the court, be entitled to his proportional interest in the stock of said corporation, upon the same terms as any other holder of said bonds. But that this should not prevent the new corporation from requiring such surrendering bondholders to pay their share of the costs and expenses of said sales and a sum not exceeding five per cent. of the principal of their bonds, provided that the same requirement should be made of all others, nor limit the power of the purchasers to organize said company without notice, or of the corporation to mortgage its property or to means for its own use not exceeding ten per cent. of its capital stock.

Your orator is informed and believes that the property sold by said decree was worth at the time not less than seven hundred and fifty thousand dollars, and he submits that it is apparent throughout the whole record that such suits were not real and bona fide litigations between contending parties, but were merely a means adopted by a large ring to obtain the property and to manage and control the same without regard to the interests and wishes of the minority who might be dissatisfied with the management. And farther, that it is very apparent that the sale made at such a*re* unfair price, for at the most one-fifteenth of the property sold, would not have been confirmed by the court
8 had it not been for the affidavit of the purchasers, the stipulation made by them, and the illegal and unauthorized consent of the said trustees, one of whom was himself interested as a purchaser. Had it not been for this consent (even without opposition), the court of its own motion would have taken notice of the fact that one hundred miles of completed railroad, with its equipments, buildings, &c., &c., property in the construction of which the proceeds of three million five hundred thousand dollars first mortgage, five million land mortgage, and one million State aid bonds was, as it appears, swallowed up, together with all the franchise of the company, was of much greater value than fifty thousand dollars, and would have refused confirmation of said sale.

Your orators farther show, as appears by the record, that said sale one hundred and thirty-nine was a proceeding to foreclose a seperate and distinct mortgage made by the Little Rock and Fort Smith Railroad Company to secure an entirely seperate and distinct issue of bonds; that neither the two series of bonds, the mortgages, nor the property conveyed had any connection with each other, and that joining them together was illegal and unauthorized. And they show that if the holder of a land-mortgage bond had by virtue of such holding no right whatever to share in any of the proceeds of sale of said property conveyed in the first railroad mortgage.

Your orator, David S. Greenough, jr., farther shows that on the said twelfth day of May, one thousand eight hundred and seventy-four, he was and is still the holder of fifty-eight of the bonds of one thousand dollars each issued by the said Little Rock and Fort Smith Railroad Company, and that he was and is interested in said sales and decrees, and he avers that by the manner in which said sales were conducted through the unjust and illegal action of said trustees, and by the mixing of two entirely distinct and seperate demands his said bonds which were worth, if proper sale of the property pledged had been made, not
9 less than two hundred dollars per bond, in the aggregate eleven thousand two hundred dollars, are by reason of said sale now not worth more than fifteen dollars per bond, or two hundred and eighty

dollars, and that by such action and decree he has been damaged to the amount of nearly, if not quite, ten thousand dollars.

And your orator, Frank Shaw, says that on the said twelfth day of May, one thousand eight hundred and seventy-four, he was and still is the holder and owner of eleven of said bonds of one thousand dollars each issued by said Little Rock and Fort Smith Railroad Company, secured by said railroad mortgage, and that by the causes aforesaid his said bonds have been reduced in value and he injured and damaged more than two thousand dollars. They exhibit herewith a transcript of the record of said cause one hundred and thirty-nine, and make it a part of this bill.

And your orators farther aver and say that they are aggrieved by said decrees ordering and confirming said sale, and that they ought not to be bound thereby, nor should any such decree have made or pronounced, and that the said decree is erroneous and ought to be reversed, and that said sale should not have been confirmed, and according to the course of this honorable court assigns as error in said proceedings and hopes to maintain.

1. That, as appears by the bill of complaint itself, the principal of the bonds secured by the railroad mortgage had not become due and payable according to the terms and conditions of said mortgage, and that the court erred in decreeing payment thereof, and in default of such payment foreclosing said mortgage.

2. That the bill contains no averment of the amount of interest upon said bonds which was due and unpaid, and that as appears by the proceedings no account thereof was ordered or taken by the court thereof, the decree being merely in general terms for payment of all unpaid int'rest, and that the court erred in rendering such general decree and in not first ascertaining, either by an account or by computation, the amount of such due and unpaid interest, and in not finding and fixing the sum to be paid by defendants to prevent foreclosure and sale, or for which the sale should be made.

3. That as appears by the decree of confirmation, the said decree was rendered by the consent of the said trustees, C. W. Huntingdon and S. H. Gookin, whereas said trustees had no right or authority to consent, and that the court erred in accepting or allowing such consent and in rendering such decree thereon.

4. That as appears from the affidavit of said purchasers, Shattuck, Weld, and Ripley, one of the trustees, S. H. Gookin, being at the time trustee for the sale of said property for the bondholders, was interested and with others was a purchaser of said property, and that the court erred in confirming (upon his own consent alone) a sale from a trustee to himself.

5. That the court erred in joining the sales of two distinct properties conveyed by seperate deeds to secure distinct and seperate issues of bonds, and sold under different decrees in what was in effect one confirmation.

6. That the court erred in requiring the holders of first mortgage bonds to surrender their rights to their security and their bonds and accept a pro-rata with the holders of land mortgage bonds in the two properties, upon a penalty in event of their declining to do so of being compelled to give up their bonds and security for a pro-rata of the pittance bid therefor.

7. That the court erred in confirming a sale of property for less than one-fifteenth of its value, because the purchasers offered to give the parties entitled thereto an interest in another property upon which they

had no claim and with which they had nothing to do. That the
11 court had no authority to allow anything but money to be received in payment for the property sold by its order or to require the bondholders to accept anything but their share of the money received for the property at a fairly conducted sale, and the attempt to compel the acceptance of stock in the new company by the roundabout way of accepting a bid of less than one-fifteenth of the value of the property, and offering the option to the bondholders of accepting either the stock offered or their pro rata of the inadequate bid accepted, is so inequitable that to insure correction it needs but to be stated.

9. That as appears by the record, a combination was formed among certain parties holding both classes of bonds, to buy the property at a nominal figure and to compel others to submit to such terms as they might impose, and that such scheme was carried out and effected by a fraudulent collusion between the purchasers and the trustees.

10. That the complainants and many of the defendants were citizens of the same State, and the court had no jurisdiction of the cause.

11. That decree pro confesso upon which both the original and amended bills were rendered against the Little Rock and Fort Smith Railroad Company without notice of the filing of said amended bill to said company or service of summons to answer the same.

In consideration whereof and for divers other imperfections and errors in said decrees and proceedings, the said decrees ought to be removed and reversed and set aside, and an account ought to be taken of the amount due and payable by said company, and the said conveyed property resold in due and proper form.

To the end therefore that said decrees and all the proceedings thereon be reviewed and reversed, may it please your honor to grant that the parties above named, to wit, The Little Rock and Fort Smith Railroad
Company, The Little Rock and Fort Smith Railway, Charles W.
12 Huntingdon and Samuel H. Gookin, be made and considered parties defendants hereto, that they answer, &c.

And that said decrees be reviewed and reversed, or that your orators be placed in the same situation that they would have been if such decrees had not been rendered, or that your orators be otherwise relieved in all and singular the premises according to equity and good concord, that subpœna issue, &c. And as such, &c.

BROWN AND FORD,
For Complainants.

UNITED STATES OF AMERICA,
Eastern District of Arkansas:

B. C. Brown says that he is of counsel for complainants in the above bill of review, and that he believes that the statements there n contained are true.

Subscribed and sworn to before me this sixth day of July, one thousand eight hundred and seventy-five.

We undertake for costs in the above cause as commenced by the foregoing bill as usual.

BROWN AND FORD.

Filed and writ issued July 6, 1875.

RALPH L. GOODRICH, *Clerk.*

Which subpœna is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Eastern District of Arkansas:

The President of the United States to the Little Rock and Fort Smith Railway Company, and the Little Rock and Fort Smith Railroad Company, greeting:

13 We command and strictly enjoin upon you that, laying all other matters aside, and notwithstanding any excuse, you, and each of you, be and personally appear before the judges of our circuit court of the United States in and for the eastern district of Arkansas, in chancery sitting, on the second day of August, A. D. one thousand eight hundred and seventy-five, it being the first Monday of August next, wheresoever the said court shall then be, and there to answer a bill of complaint exhibited against you in our said court by Frank Shaw et al., and to do further and receive what our said court shall have considered in that behalf; and this you are not to omit under penalty of what the law directs.

In testimony whereof Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, has caused the seal of the said circuit court to be hereunto affixed this sixth day of July, A. D. one thousand eight hundred and seventy-five, and in the one hundredth year of our Independence.

Attest:

[SEAL.] RALPH L. GOODRICH,
Clerk.

N. B.—The defendants are required to enter their appearance in the above cause in the clerk's office of this court, on or before the second day of August, one thousand eight hundred and seventy-five, or the bill will be taken pro confesso against them.

RALPH L. GOODRICH,
Clerk.

I have served the within subpœna on the Little Rock and Fort Smith Railroad Company by delivering a true copy of the same into the hands of Chisholm for B. F. Danley, esq., president of said com-

14 pany, said Chisholm being a member of the family of said Danley, over the age of sixteen years, at Palarm Station, in the eastern district of Arkansas, this thirty-first day of July, one thousand eight hundred and seventy-five.

JAMES TORRANS,
United States Marshall, E. D. A.,
By C. M. BARNES,
Deputy.

Service, 4.00; copies, 1.50; mil'age, 1.00—6.50.

I have served the within subpœna on the within named Little Rock and Fort Smith Railway, by delivering a true copy of the same into the hands of Gordon N. Peay, secretary, at nine o'clock a. m., in the eastern district of Arkansas, on this second day of August, A. D. one thousand eight hundred and seventy-five.

JAMES TORRANS,
U. S. Marshal for E. D. A.,
By C. M. BARNES,
Deputy Marshal.

Ret'd & filed Aug. 6, 1875.

RALPH L. GOODRICH,
Clerk.

On August fourth, 1875, as follows:

FRANK SHAW ET AL.
vs.
LITTLE ROCK AND FORT SMITH RAILWAY ET AL.

And now comes the defendant, The Little Rock and Fort Smith Railway, by Clark and Williams, its solicitors, and enters its appearance in this cause and asks and obtains time until the first Monday in September next, to file its answer herein.

15 And on August twelfth, eighteen hundred and seventy-five, as follows:

And now comes the said def'ndant, The Little Rock and Fort Smith Railway, by Clark and Williams, its solicitors, and files its de-
16 murrer to the bill of complaint herein, which demurrer is in the words and figures following, to wit:

United States circuit court eastern district of Arkansas. In chancery.

The demurrer of the Little Rock and Fort Smith Railway, a corporation existing under the laws of Arkansas, and one of the defendants, to the bill of complaint of Frank Shaw and David S. Greenough, jr.

This defendant, by protestation, not confessing or acknowledgeing all or any of the matters, &c., to be true, &c., doth demur to said bill, and for cause of demurrer, doth show that there are no errors in the record and premises and in the decrees of this court of the sixth day of November, one thousand eight hundred and seventy-four, and of the nineteenth day of December, one thousand eight hundred and seventy-four, in the said bill of review mentioned to entitle the said complainants to reverse the said decree; nor doth the said complainant allege or set up any new matter discovered or pretended to be discovered since the rendition of said decrees or either of them, as a basis or ground for the reversal or alteration of the said decrees; wherefore this defendant demurs to said bill as a bill of review, and humbly prays the judgment of the court whether she sought to be compelled to put in any further or other answer thereto.

And said defendant doth further demur in law to the said bill as a bill to impeach the said decree or decrees for fraud, and for cause of demurrer shows that no facts or circumstances constituting fraud in law as a ground for impeaching and setting aside the said proceedings and decrees referred to in the complainants bill, are alleged therein.

Wherefore she prays judgment whether she ought to be compelled to put in any further or other answer, and humbly prays to be hence discharged with her reasonable costs.

SOL. F. CLARK,
Attorney for Def'ts.

17 UNITED STATES,
Eastern District of Arkansas:

I, Sol. F. Clark, being duly sworn, do depose and say that the above demurrer is not interposed for delay; that the defendant demurring is a corporation existing under the laws of Arkansas, and that I am the attorney of record of the said corporation.

SOL. F. CLARK.

Sworn to and subscribed before me this twelfth day of August, one thousand eight hundred and seventy-five.

RALPH L. GOODRICH, *Clerk*,
By VAN CALDWELL, *D. C.*

We, Clark and Williams, attorneys and counsellors at law at Little Rock, Arkansas, do hereby certify that in our opinion the above demurrer is well founded in point of law.

Given this tenth day of August, one thousand eight hundred and seventy-five.

CLARK AND WILLIAMS.

Filed August 12, 1875.

RALPH L. GOODRICH, *Clerk.*

UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Be it remembered that at a circuit court of the United States of America, in and for the eastern district of Arkansas, begun and holden on Monday, the twenty-fifth day of October, anno Domini one thousand eight hundred and seventy-five, at the United States court room in the city of Little Rock, Arkansas, the honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were, to wit, on November twelfth, one thousand eight hundred and seventy-five:

FRANK SHAW ET AL.
vs.
THE LITTLE ROCK AND FORT SMITH RAILway et al.

18 And now on this day come the complainants by Brown and Ford, esquires, their solicitors, and come the defendant Clark and Williams, their solicitors, and the cause came on to be heard upon the demurrer heretofore filed to the bill of complaint and was argued by counsel, whereupon the court, being advised as to what judgment to be rendered thereon, doth sustain said demurrer, and the complainants electing to stand upon said demurer and not desiring to amend his said bill, it is ordered, adjudged, and decreed that the said bill be and the same is hereby dismissed, and thereupon the complainants filed herein their motion for an appeal of this case to the Supreme Court of the United States, which appeal is hereby granted.

And on December thirty-first, one thousand eight hundred and seventy-five, as follows:

FRANK SHAW ET AL.
vs.
LITTLE ROCK AND FORT SMITH RAILWAY et al.

On this day come Brown and Ford, solicitors for plaintiffs, and Clark and Williams, solicitors for defendants. Charles W. Huntingdon, Samuel H. Gookin, and enter their appearance herein, and the case is continued, with leave to them to plead, answer or demur by the first day of the next term of this court.

UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Be it remembered, that at a circuit court of the United States of America, in and for the eastern district of Arkansas, begun and holden on Monday, the tenth day of April anno Domini one thousand eight

hundred and seventy-six, at the United States court room in the city of Little Rock, Arkansas, the honorable John F. Dillon, judge of the circuit court of the United States for the eighth judicial circuit, presiding, and honorable Henry C. Caldwell, district judge, and holding
19 said court, the following proceedings were had, to wit, on May first, one thousand eight hundred and seventy-six.

FRANK SHAW ET AL., COMPLAINANTS,
vs.
THE LITTLE ROCK AND FORT SMITH RAILWAY Company et als., defendants. } Bill of review.

On this day comes the parties herein by their solicitors, and the defendants, Charles W. Huntingdon, Samuel H. Gookin, and Elisha Atkins, file their demurrer to the complainants' bill of complaint herein, and the said complainants join in demurrer; and the said demurrer having been argued by counsel and submitted, is by the court sustained. And the complainants declining to amend their said bill of complaint and review, it is ordered, adjudged, and decreed by the court here that the same be, and it is hereby, finally dismissed at the costs of complainants. And thereupon the complainants pray an appeal to the Supreme Court of the United States, which is granted. Which demurrer is in the words and figures following, to wit:

U. S. circuit court, east. dist. of Arkansas. In chancery.

The demurrer of Charles W. Huntington, Samuel H. Gookin, and Elisha Atkins, trustees in the land mortgage of the Little Rock and Fort Smith Railroad Company, and defendants to the bill of complaint of Frank Shaw and David S. Greenough, jr.

These defendants by protestations not confessing or acknowledging all or any of the matters, &c., to be true, &c., do demur to said bill, and for cause of demurrer do show that there are no errors in the
20 record and premeses and in the decrees of this court of the sixth day of November, one thousand eight hundred and seventy-four, and on the nineteenth day of December same year, in the said bill of review mentioned, to entitle the said complainants to reverse the said decrees, nor doth said complainants allege or set up any new matter discovered or pretended to be discovered since the rendition of the said decrees or either of them, as a basis or ground for the reversal or alteration of said decrees. Wherefore this defendant demurs to the said bill as a bill of review, and doth further demur to the same as a bili to impeach the said decree or decrees for fraud, because no facts or circumstances constituting fraud in law or equity are alleged in said bill as a ground for impeaching or setting aside the same. Wherefore they pray judgment whether they ought to be compelled to *to* put in any further or other answer, and humbly pray to be hence discharged with their reasonable costs.

SOL. F. CLARK,
Attorney for Trustees

UNITED STATES,
Eastern District of Arkansas:

I, Charles W. Huntington, one of the defendants, trustees above-named, and in behalf of all, being duly sworn, do depose and say that the above demurrer is not interposed for delay.

C. W. HUNTINGTON,
Trustee.

Sworn to and subscribed before me this twenty-first day of April, one thousand eight hundred and seventy-six.

RALPH L. GOODRICH,
Clerk.

We, Clark and Williams, attorneys and counsellors at law at Little Rock, Arkansas, do hereby certify that in our opinion the above demurrer is well founded in point of law.

CLARK AND WILLIAMS.

Filed May 1, 1876.

RALPH L. GOODRICH,
Clerk.

21 The transcript of the cause number one hundred and thirty-eight, referred to in the bill of review as an exhibit thereto, is in the words and figures following, to wit:

Before the clerk in vacation, May twelfth, one thousand eight hundred and seventy-four.

HENRY W. PAINE, AS TRUSTEE,
vs.
LITTLE ROCK AND FORT SMITH RAILROAD Company et al.

Comes the complainant by Clark and Williams, esquires, his solicitors, and files herein his bill of complaint and exhibits thereto, and on motion of said solicitors it is ordered that a writ of subpœna issue herein, returnable on the first Monday in June next, which is accordingly done. Which bill is in the words and figures following, to wit:

To the judges of the circuit court of the United States for the eastern district of Arkansas.

Henry W. Paine, of Cambridge, in the State of Massachusetts, and a citizen of said State of Massachusetts, as he is a trustee under the deed of mortgage hereinafter mentioned, brings this his bill against the Little Rock and Fort Smith Railroad Company, a corporation created by and existing under the laws of the State of Arkansas, and a citizen of said State of Arkansas; Thomas C. Peek, J. D. Plose, John H. Haney, John J. Clendennin, Robert C. Bruce, and Harvey Lewis, surving partners of the late firm of Bruce, Brother and Company; Augustus H. Garland and Lucius B. Nash, former copartners under the firm name of Garland and Nash; Augustus H. Garland, Henry Kyles, Uriah M. Rose, Wilson B. Gibson, and Benton J. Brown, all of the city
22 of Little Rock, in the State of Arkansas; John G. Steacy, now covenant at said Little Rock, and John P. Gaston, of Nova Scotia, as they are surviving partners of the late firm of Pierce, Steacy, and Gaston; Comelias Hurley, of in the State of and a citizen State of ; Andrew B. Battelle, and John G. Batelle, both of Memphis, in the State of Tennessee, and said citizens of the said State of Tennessee, copartners doing business under the firm name of Battelle and Company; the Saint Louis Railway Supplies Manufacturing Company, a corporation existing under the laws of the State of Missouri, and citizen of said State of Missouri.

And thereupon your orator complains and says:

First. That the said Little Rock and Fort Smith Railroad Company, at the time of the execution of the mortgage deed hereinafter mentioned, was, and now is, a corporation duly created by and existing under the laws of said State of Arkansas, for the purpose of constructing, operating, and maintaining a railroad from Little Rock by way of Van Buren to Fort Smith in said State, with authority to make, execute, and deliver the mortgage deed and the bonds secured thereby hereinafter more specifically set forth. That on the twenty-second day of December, in the year one thousand eight hundred and sixty nine, Charles G. Scott, the then president, and John H. Haney, the then secretary of the said The Little Rock and Fort Smith Railroad Company, being thereunto legally and duly authorized by a vote of the stockholders of said railroad company at a meeting of said stockholders, held in confirmity with the provisions of the law incorporating said company, executed and delivered, in the name and in behalf of and under the corporate seal of said company, to Henry W. Paine and Samuel T. Dana, both of the State of Massachusetts and citizens of said State, as trustees, a cer-

23 tain deed of mortgage bearing date the said twenty-second day of December, by which said deed of mortgage the said The Little Rock and Fort Smith Railroad Company granted, bargained, sold, conveyed, and transferred unto the said Henry W. Paine and Samuel T. Dana, trustees, as joint tenants and not as tenants in common, and to the survivor of them and their successors and assigns all and singular the railroad of the said The Little Rock and Fort Smith Railroad Company, or which the said company is by law authorized to contract, being the line of railroad theretofore known or thereafter to be known as the Little Rock and Fort Smith Railroad as the same was and thereafter might be constructed, from the city of Little Rock, in the county of Pulaski and State of Arkansas, to the city of Fort Smith in the county of Sebastian, and State aforesaid, near the western boundary of said State of Arkansas, including all the railways, branches, ways, rights of ways, all tracks, bridges, viaducts, culverts, fences, depots, station-houses, engine-houses, car houses, freight houses, wood-houses, water stations, machine shops, and all other buildings and structures with the lands appurtenant to the same, and all locomotives, tenders, cars, and other rolling stock or equipment, and all other machinery, tools, implements, fuel, materials, and all other personal property of any nature, kind and description then held or acquired or thereafter acquired or to be held by the said company, its successors or assigns, for use in connection with the railroads or branches of the said company, or without any part thereof, or with the business of the same, and also all franchises connected with or relating to said railroad or branches, or to the construction, maintenance, or use of the said railroad or branches, and all the franchises, rights and things of whatsoever name or nature then held or thereafter to be acquired by the said The Little Rock and Fort Smith Railroad Company or its successors, together with all and singular the tenements, hereditaments, and appurtenances to the said railroad, branches, lands,

24 and premises, or either thereof, belonging or *or* in any wise appertaining; and the reversion and reversions, remainder and remainders, titles, incomes, revenues, rents, issues, and profits thereof, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said The Little Rock and Fort Smith Railroad Company, of, in, and to the same, and any and every part thereof, with the appurtenances, excepting and reserving all the lands which thereafter had been or thereafter might be

granted to the said company by the Congress of the United States or by the State of Arkansas, and all such lands as theretofore had been or thereafter might be granted, given, or conveyed to said company in payment for subscriptions to its capital stock or otherwise, all which said lands (with the exception of the ways, rights of way, and real estate hereinbefore specifically named or mentioned) were in and by said deed of mortgage reserved and excepted:

To have and to hold the above mentioned and described railroad, branches, real estate, personal property, and premises, with the appurtenances, and except as hereinbefore named, unto the said Henry W. Paine and Samuel T. Dana, trustees, as joint tenants and not as tenants in common, and to the survivor of them, and their successors and assigns, to the only proper use, behoof and benefit of the said Paine and Dana, trustees, and the survivor of them and their successors and assigns, in trust, nevertheless, fo' the purposes in said deed of mortgage expressed all of which will more fully and at large appear by reference to said original deed of mortgage to be in court produced, and be a copy thereof hereto annexed marked Exhibit A, which your orator prays may be taken to be and considered as a part of this his bill of complaint. And your orator avers that said deed of mortgage was duly stamped as re-

quired by the laws of the State of Arkansas in the several counties
25 upon the line of the railroad of the said The Little Rock and Fort Smith Railroad Company, and in such counties as the property described in said mortgage deed was situated, wherever required by law.

Second. And your orator, further complaining, says that the said The Little Rock and Fort Smith Railroad Company executed and delivered the aforesaid deed of mortgage to the said Henry W. Paine and Samuel T. Dana, trustees, in order the more effectually to secure the payment of the principal and interest of three thousand five hundred bonds of said railroad company, had re'olved to issue and negotiate each of said bonds, being of the denomination of one thousand dollars, and amounting in the aggregate to three million five hundred thousand dollars, payable in United States gold coin on the first day of January, in the year nineteen hundred, at the city of Boston, Massachusetts, with interest thereon at the rate of six per centum per annum, papable semi-annually, in gold coin of the United States free from any United States Government tax, at said city of Boston, on the first day of July and January in each year, upon presentation and surrender of the coupons or interest warrants attached to said bonds, as they severally become due and payable, the first of said coupons or interest warrants being due and payable on the first day of July, in the year one thousand eight hundred and seventy, all of which will more fully and at large appear by reference to a copy of said bonds set forth in the deed of mortgage above mentioned; a copy is hereto annexed, marked Exhibit A, and which your orator prays may be taken to be and considered as a part of this his bill of complaint.

And your orator is informed and believes, and therefore avers, that the said The Little Rock and Fort Smith Railroad Company, after the execution and delivery of the aforesaid deed of mortgage to the said

Henry W. Paine and Samuel T. Dana, trustees, and after said
26 deed of mortgage had been duly stamped and recorded as required by the laws of the United States and of the State of Arkansas, did from time to time issue the entire amount of bonds described in the aforesaid deed of mortgage, and to secure the payment of the principal and interest of which said bonds the aforesaid mortgage deed was executed, and that the aforesaid three thousand five hundred bonds,

amounting in the aggregate without interest to the sum of three millions five hundred thousand dollars, remain outstanding against said railroad company.

Third. And your orator, further complaining, says that in and by article fourth of said deed of mortgage it was mutually agreed by and between the said The Little Rock and Fort Smith Railroad Company and the said Henry W. Paine and Samuel T. Dana, trustees, that the word "trustees" as used in said mortgage deed should be construed to mean the trustees or trustee for the time being whether original or substituted, and that whenever a vacancy should exist, to mean the surviving or continuing trustee, and that such trustee should, during such vacancy, be competent to exercise all the powers, by said deed of mortgage granted to or conferred upon the aforesaid Henry W. Paine and Samuel T. Dana, as joint tenants; also that either of said trustees or any successor, may resign or discharge himself of the trust created by said deed of mortgage by notice in *un*iting to the said railroad company and to the existing trustee, if there be such, three months before such resignation should take effect, or such shorter time as they may accept as adequate notice. And your orator avers that pursuant to the aforesaid provisions of said deed of mortgage the said Samuel T. Dana, did on the thirteenth day of May, in the year one thousand eight hundred and seventy-one, notify your orator and the said railroad company in *un*iting by notice dated on said thirteenth day of May, that *t*he resigned his aforesaid trust under said deed of mortgage, and no successor
27 to the said Dana has as yet been appointed in said trust, whereby and by virtue of the provisions of the said deed of mortgage above cited, your orator is vested with the authority, and is competent to exercise all the powers granted to or conferred upon your orator and the said Samuel T. Dana jointly as trustees.

Fourth. And your orator, further complaining, says that in and by article first of said deed of mortgage, it was provided that until default should be made by the said The Little Rock and Fort Smith Railroad Company, its successors or assigns, in the payment of the principal or interest, or some part thereof, of the aforesaid bonds to secure which said deed of mortgage was executed, or some one of said bonds, or in some other requirement of said deed of mortgage, the said railroad company should be suffered and permitted to possess, manage, operate, and enjoy the said railroad and branches, with its equipments and appurtenances, and also all the lands and premises, property, and franchises in said mortgage deed described, and to receive, take, and use the tolls, incomes, revenues, rents, issues, and profits thereof, in the same manner and with the same effect as if said mortgage deed had not been executed.

And in and by article second of said deed of mortgage it was among other things provided that in case default should be made in the payment of any interest on anything of said bonds, according to the tenor thereof, or of the coupons thereto annexed, and any such default should continue period of three months, it should be lawful for the said trustees, or the survivor of them, or their successors, personally, or by their or his attorneys or agents, the said default still continuing, upon the written request of the holder or holders of one hundred of said bonds, to enter into and upon and take possession of all and singular the railroads, lands, personal property, and premises in and by said mort-
28 gage deed conveyed, and to have, hold, possess, use, and employ the same, operating by their or his superintendents, managers,

receivers, or servants, or other attorneys or agents of the said railroad, and conducting the business thereof.

And in and by article third of said deed of mortgage it was also provided, among other things, that in case default should be made in the payment of any interest on any of the aforesaid bonds (to secure which said mortgage deed was executed), according to the tenor thereof, or of any of the coupons thereto annexed, and such default should continue for the period of six months, it should likewise be lawful for the said trustees, or the survivor of them, or their successors, after entry as aforesaid, or other entry, or without entry, personally or by his or their agents, to sell and dispose of all and singular the railroads, lands, personal property, and premises in and by said mortgage deed conveyed, or intended so to be, by the public auction in the Little Rock, in the county of Pulaski, or at such other place within the State of Arkansas as the said trustees, or the survivor of them, or their successors, should designate, and at such time as he and they may appoint after having first given the notice of the time and place of such sale, as prescribed in said article seventh; and that such sale, made pursuant to the terms of said article, should be a perpetual bar, both in law and in equity, against the said The Little Rock and Fort Smith Railroad Company, its successors and assigns, and all other persons claiming or to claim the said premises, or any part or parcel thereof, by, from, through, or under the said railroad company, its successors or assigns.

And in and by article fourth of said deed of *mbteg* mortgage, it was provided that in case default should be made in payment of any half year's interest on any of the said bonds, at the time and in the manner in the coupon issued therewith provided, the said coupon having been presented and the payment of the interest therein specified having been demanded, and such default shall continue for the period of three months after the said coupon shall become due and been demanded as aforesaid, then and thereupon the principal of all the said bonds shall, at the election of the said trustees, become immediately due and payable.

29

All of which will more fully and at large appear by reference to the aforesaid original deed of mortgage, to be in court produced, and the copy thereof marked Exhibit A, which your orator prays may be taken to be and considered as a part of this his bill of complaint.

Fifth. And your orator, further complaining, says that the said The Little Rock and Fort Smith Railroad Company has made default and failed to pay the following coupons or interest amounts attached to the bonds issued under the aforesaid deed of mortgage as the same became due and payable, viz:

The coupons due and payable January first, 1871.
The coupons due and payable July first, 1871.
The coupons due and payable January first, 1872.
The coupons due and payable July first, 1872.
The coupons due and payable January first, 1873.
The coupons due and payable July first, 1873.
The coupons due and payable January first, 1874.

And the aforesaid coupons still remain unpaid, notwithstanding the coupons due and payable upon ma'y of the said bonds on January first, one thousand eight hundred and seventy-one, and July first, one thousand eight hundred and seventy-one, were presented for payment, and the payment of the interest thereon specified was duly demanded; that the entire line of the railroad of the said The Little Rock and Fort Smith Railroad

Company from the city of Little Rock to the city of Fort Smith is
30 about one hundred and sixty miles in length; that the said railroad has thus far been only constructed from Argenta, a point upon the north side of the Arkansas River, opposite to the city of Little Rock, to the town of Clarksville in said State, a distance of about one hundred miles, and said railroad has been operated from Argenta to Clarksville for about the period of one year; that said company, as your orator is informed, has issued all the bonds secured by the aforesaid mortgage deed, as well as all the bonds issued under and secured by a mortgage executed upon the lands granted to said company by acts of Congress and the general assembly of the State of Arkansas; that said railroad company has become, now is, and for a long time has been notoriously and hopelessly insolvent, without credit and without the means of establishing a credit; that the bonds of said company issued under the aforesaid mortgage to the said Henry W. Paine and Samuel T. Dana, trustees, as well as the bonds issued under the mortgage upon the lands granted to said company as aforesaid, command only a nominal price in the market; that the returns of the earnings and expenses from the operation of the road of said company from Argenta to Clarksville, for upwards of a year, show that said railroad has been operated and maintained at a loss; that it is the opinion of many persons competent to form and express an opinion in such matters that said railroad cannot be profitably *be* operated or made to p'y more than its expenses until said road is extended and completed to Fort Smith, as was originally intended by the act of the general assembly of the State of Arkansas incorporating the said The Little Rock and Fort Smith Railroad Company, and to aid in the construction of which said railroad the Congress of the United States granted to the State of Arkansas and the State of Arkansas granted to the said railroad company every alternate section of public land of the United States not mineral to the amount of ten
alternate sections per mile for each mile of railroad and adjoin-
31 ing and adjacent to the line of said railroad; that said lands will, by the terms and conditions thereof, become forfeited unless an additional section of twenty miles of said railroad is completed to the satisfaction of the Secretary of the Interior of the United States on or before the thirteenth day of May, in the year one thousand eight hundred and seventy-five; that the road-bed of said railroad and a number of its bridges and rolling stock require renewals and repairs in order to render the same safe for the transportation of passengers and freight; but said railroad company, as your orator is informed and believes, has no money and no means of raising money with which to make the aforesaid necessary renewals and repairs. And your orator avers that by virtue of the power and authority conferred upon by the aforesaid deed of mortgage, and more particularly by articles four and seven thereof, hereinbefore recited, he has elected that the principal of all the bonds issued under said deed of mortgage shall become immediately due and payable.

Sixth. And your orator, further complaining, says that prior to the execution and delivery of the aforesaid deed of mortgage to the said Henry W. Paine and Samuel T. Dana, the said The Little Rock and Fort Smith Railroad Company being desirous of availing itself of the provisions of an act of the general assembly of the State of Arkansas, approved July twenty-first, one thousand eight hundred and sixty-eight, and entitled "An act to aid in the construction of railroads," and of receiving the State aid therein provided for, having first complied with all

the terms and conditions prescribed by said act, in due form of law made application to the board of railroad commissioners of said State of Arkansas for a loan of the credit of said State in conformity with the provisions of said act, and thereupon such proceedings were had as re'uired by said act; that thereafter, to wit, on the twenty-eighth day of April, one thousand eight hundred and sixty-nine, said board of railroad
32 commissioners approved and granted said application, and thereafter the said The Little Rock and Fort Smith Railroad Company became entitled to and had the right, upon complying with the terms and conditions of said act, to ask for, demand and receive the bonds of the State of Arkansas in the sum of one thousand dollars each, payable in thirty years from the date thereof, with coupons thereto attached for the payment of interest on the same in the city of New York, semi-annually, at seven per centum per annum, to the amount in the aggregate of ten thousand dollars in bonds for each mile of railroad, and thereafter the said The Little Rock and Fort Smith Railroad Company, as your orator is informed and believes, from time to time received from the governor of said State of Arkansas, for the time being, the bonds of the State issued under said act, to the amount in the aggregate of one million dollars of said bonds, the same being the amount of bonds to which said company was entitled under the provisions of said act for or upon the hundred miles of its said railroad, for which said bonds the president of said company from time to time duly filed his official receipts, together with the affidavits of himself and four directors, as required by the provisions of said act. But your orator avers that none of said State aid bonds were issued to said company until long after the execution and delivery of the aforesaid mortgage to said Paine and Dana.

And your orator, further complaining, says that it was provided in and by section seven of said act, that the legislature should from time to time impose upon each railroad company to which bonds shall have been issued, a tax equal to the amount of the annual interest upon such bonds then outstanding and unpaid, which tax might be paid in money or in the past due coupons of the Stat' at par, and *the* at the expiration of five years from the completion of said road the legislature should impose an additional special tax of two and one-half per cent. per annum upon the whole amount of State aid granted
33 to such company, payable in money or in the bonds and coupons of the State at par; and if in money, that the same should be invested by the treasurer of the State in the bonds of the State at their current market value; that the taxation provided for in said section should continue until the amount of bonds issued to each company, with the interest thereon, shall have been paid as specified in said section, in which case the said road shall be entitled to a discharge from all claims or liens on the part of the State. Said section seven also contained a provision to the effect that nothing in said section contained should be so construed as to deprive any company securing the loan of the bonds of the State therein provided for from paying the whole amount due from such company to the State at any time in the bonds of the State loaned in aid of railroads or the coupons thereon, or in money.

And your orator, further complaining, says that it was also provided in and by section eight of said act, that in case said company should fail to pay the taxes imposed by said section seven as hereinbefore recited, at the time the same became due, and for sixty days thereafter, it should be the duty of the treasurer of the State, by writ of sequestration, to seize and take possession of the revenues of said company

until the amount of said defaults should be fully paid up and satisfied, with costs of sequestration, after which said treasurer should release the further revenues of said company to its proper officers.

And your orator, further complaining, says that it was also provided in and by section twelve of said act, that at the next general election to be holden under the provisions of section three of article fifteen of the constitution of said State, the proper officers having charge of such election should upon a poll, as in other cases, take and receive the ballots of the electors qualified to vote for officers at such election for
34 and against said act, in compliance with section six of *which* ten of said constitution, such ballot to contain the words "for railroads," or "against railroads"; and that if it should appear that a majority so voting have voted "for railroads," said act should immediately become operative and have full force, and all laws theretofore passed for loaning the credit of said State in aid of railroads should cease and be void, but if a majority should be found to have voted "against railroads," said act should be void and of no effect.

Seventh. And your orator, further complaining, says that under and by virtue of an act of the general assembly of said State of Arkansas, approved April tenth, one thousand eight hundred and sixty-nine, entitled "An act to provide for paying the interest of the bonds issued to aid in the construction of railroads," it was provided that all bonds issued to aid in the construction of railroads should be so issued as to make the interest thereon become due on the first day of April and the first day of October, in each year; that is to say, that on all bonds issued between those dates, the factional coupons should be cut off or cancelled at the time they are issued so that the interest shall not commence accruing until the date of the next semi-annual payment after such issue. Also that the auditor of public accounts should, on or before the first day of June and on or before the first day of October in each year, certify to the treasurer of said State the amount of bonds issued to each railroad company, the amount of semi-annual interest that will accrue thereon, that is to say, the amount of interest the State will have to pay on the first day of October of that year, and on the first day of April in the ensuing year, on the bonds issued to each of said railroad companies, and the amount of tax required from each of said railroad companies to pay the same, which tax shall be deemed due and payable on the thirteenth day of June of that year and on the thirty-first
35 day of December of the same year; and in and by said act approved April tenth, one thousand eight hundred and sixty-nine, the treasurer of said State is required, upon the receipt of the auditor's certificate as aforesaid, to cause notice to be served upon each railroad company on or before the twentieth day of June and December in each year, specifying the amount of tax to be paid, which amount shall be the interest on said bonds for said period, and demanding the payment of the same into the treasury on the thirteenth day of June and the thirty-first day of December, respectively, in compliance with the provisions of said acts approved July twenty-first, one thousand eight hundred and sixty-eight, and April tenth, one thousand eight hundred and sixty-nine, and in and by said last named act in case at the expiration of sixty days after said tax shall become due and payable and said railroad company shall have been notified by said treasurer, as aforesaid, said railroad company shall fail to make full payment, as in said notice required, it is made the duty of the State treasurer, through the attorney-general, to make and file a petition order the sale of the treasurer's office, in the Pulaski chancery court, setting forth the amount due and

the fact of said default, praying the issue of the writ of sequestration contemplated in said act approved July twenty-first, one thousand eight hundred and sixty-eight, and the appointment of a receiver to be named in said petition, to receive in his behalf the revenue and income of said company, for the purpose specified in said act approved July twenty-first, one thousand eight hundred and sixty-eight, which writ shall issue upon the filing the petition for the same. And it is further provided in and by said act approved July tenth, one thousand eight hundred and sixty-nine, that upon the issue of the said writ of sequestration, the receiver therein named shall take possession of all the income and revenues of said defaulting company, with authority to demand and receive all moneys coming to the same from the operation of such
36 road, and it is made the duty of all the officers of said company to return all moneys to him, of which said moneys he is required by said act to make full report and return to the treasurer of said State at the end of each month, together with his estimate of the necessary cost of operating said road, which on the approval and order of said treasurer, shall be paid out of the money so returned, the surplus or net proceeds to be applied in the discharge of the tax due and unpaid.

And your orator is informed and believes that the said The Little Rock and Fort Smith Railroad Company after having been duly notified by the treasurer of said State of Arkansas as required by law hereinoefore specifically set forth, has failed to pay the tax or interest upon the bonds issued to said company, by said State, as aforesaid, due and payable as follows, viz:

The coupons due and payable October first, 1870.
The coupons due and payable April first, 1871.
The coupons due and payable October first, 1871.
The coupons due and payable April first, 1872.
The coupons due and payable October first, 1872.
The coupons due and payable April first, 1873.
The coupons due and payable October first, 1873.
The coupons due and payable April first, 1874.

And that said treasurer has filed his petition, as required by law, in the Pulaski chancery court, setting forth the amount due from said company and the fact of said default, and praying for the issue of writ of sequestration and the appointment of a receiver to receive the revenue and income of said company in his behalf and in compliance with the provisions of said act approved April tenth, one thousand eight hundred and sixty-eight, hereinbefore more particularly set forth, which said writ of sequestration issued upon the filing of the petition
37 for the same, and one S. B. Beaumont, now of Little Rock aforesaid, is now acting as receiver as aforesaid. That the honorable the chancellor of said Pulaski chancery court on the twenty-first day of May, one thousand eight hundred and seventy-four, ordered and decreed that the supplementary petition under which the said S. Beaumont was appointed as aforesaid be dismissed for want of equity, and that the order appointing the said Beaumont such receiver be revoked, and set aside, all of which will more fully and at 'arge appear by reference to a certified copy of said order and decree to be in court produced.

Eighth. And your orator further complaining says he is informed and believes that the said defendant Thomas C. Peek, on the thirteenth day of June, one thousand eight hundred and seventy, recovered judgment against the said Little Rock and Fort Smith Railroad Company, in the circuit for the county of Pulaski and State of Arkansas, for the sum of five hundred dollars; that the defendant J. D. Plose, on the twenty-third

day of December, one thousand eight hundred and seventy-one, recovered judgment against said company in said court for the sum of one hundred and fifty dollars; that the defendant John H. Haney, on the sixth day of January, one thousand eight hundred and seventy-two, recovered judgment against said company in said court for the sum of nine thousand five hundred and ninety-two dollars and forty-two cents, and on the twenty-third day of June, one thousand eight hundred and seventy-three, recovered another judgment against said company in said court for the sum of twelve thousand eight hundred twenty-two dollars and fifty cents, and on the sixth day of November, one thousand eight hundred and seventy-three, recovered one other judgment against said company in said court for the sum of two thousand seven hundred fifty-one dollars and twenty-one cents; that the said John J. Clendennin, one of said defendants, on the sixth day of January, one thousand eight hundred and seventy-two, recovered judgment against
38 said company, in said court, for the sum of one hundred and fifty dollars; that the said defendant Cornelias Harley, on the ninth day of January, one thousand eight hundred and seventy-two, recovered judgment in said court against said company for the sum of seven thousand nine hundred eighty-one dollars and five cents; that the said defendant Robert C. Bruce and Harvey Lewis, surviving partners of the late firm of Bruce Brother and Company, on the first day of November, one thousand eight hundred and seventy-three, recovered judgment in said circuit court against said company for the sum of five hundred fifty-five dolllars and ninety cents; that the said defendants Augustus H. Garland and Nash, also copartners under the firm name of Garland and Nash, on the thirteenth day of November, one thousand eight hundred and seventy-three, recovered judgment in said court against said company for the sum of three thousand nine hundred fourteen dollars and eighty-eight cents; that the said defendant Henry Kyles, on the thirteenth day of November, one thousand eight hundred and seventy-three, recovered judgment in said circuit court against said company for the sum of three hundred and fifty dollars; that the said defendant Uriah M. Rose, on the eleventh day of March, one thousand eight hundred and seventy-four, recovered judgment in said court against said company for the sum of four thousand seven hundred and fifty dollars; that the said defendants John G. Steacy and John P. Garston, surviving of the late firm of Pierce, Steacy, and Garston, on the nineteenth day of March, one thousand eight hundred and seventy-four, recovered judgment in said court for the sum of five thousand five hundred and ten dollars; that the said defendant W. B. Gibson, on the third day of March, one thousand eight hundred and seventy-four, recovered judgment in said court against said company for the sum of two thousand one hundred and twenty-two dollars and thirty-five cents; that the said defendant Benton J. Brown, on the eighteenth day of March,
39 one thousand eight hundred and seventy-four, recovered judgment in said court against said company for the sum of five hundred forty-three dollars and fifty cents; that the defendants Andrew B. Battelle and John G. Battelle, doing business under the firm name of Battelle and Company, on the fourth day of December, one thousand eight hundred and seventy-three, recovered judgment in the circuit court of the United States for the eastern district of Arkansas, against said company for the sum of one thousand two dollars and twenty-seven cents; and that the defendant the Saint Louis Railway Supplies Manufacturing Company, on the fifth day of December, one thousand eight hundred and seventy-three, recovered judgment against said company

in said circuit for the sum of five thousand seven hundred seventy-six dollars and thirty-eight cents. All of which said judgments your orator is informed and believes still remain unsatisfied, in whole or in part, and are still in full force and effect against said company; and your orator is advised that under and by virtue of the laws of the State of Arkansas the aforesaid judgments are a lien upon the road and property of said company, subject, however, to the lien created by the aforesaid mortgage executed to the said Henry W. Pannen and Samuel T. Dana, by the said The Little Rock and Fort Smith Railroad Company, as hereinbefore set forth.

To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, your orator hereby waiving the necessity of the defendants' answer being put in under the oaths of said defendants, or the oath of any of them, and may according to the out and utmost of their several and respective knowledge, *knowledge*, remembrance, information and belief, full, true, direct and perfect answer make to all and singular the matters aforesaid, paragraph by paragraph, and that as fully and particularly as if the same were here repeated and they and every one of them distinctly interrogated thereto, and that the railroad of the said The Little Rock
40 and Fort Smith Railroad Company, together with all its franchises, equipments, appurtenances and property mentioned and described in the aforesaid deed of mortgage, executed to the said Henry W. Paine and Samuel T. Dana, as aforesaid may be sold subject to the lien of the State of Arkansas if your honors shall find and decree that any lien exists in form of said State prior to the lien created by the deed of mortgage, and that the proceeds of said sale may be paid into this honorable court to await the order and direction of said court; and that until said sale can be effected and the title of the purchasers under such sale can be perfected, a receiver or receivers may be appointed by this honorable court to take possession of said railroad, franchises and property mentioned or described in the aforesaid deed of mortgage, and may be directed by this honorable court in the operation of said road and the management of the aforesaid railroad and property, and that said company be restrained from intermeddling therewith, and that said receiver or receivers be authorized to borrow money sufficient to operate said road and to make all necessary repairs upon the road bed, track, bridges and rolling stock, as well as to complete said road so that the lands granted to the said company by the acts of the Congress of the United States, and by *and by* the general assembly of the State of Arkansas, may not become forfeited; and that said receiver or receivers be authorized to secure the moneys so borrowed by debentures, to be a lien upon said railroad already constructed, and that may be hereafter constructed by said receiver or receivers, to take precedence of said mortgage thereon. And that all persons claiming under the said The Little Rock and Fort Smith Railroad Company, and all other persons claiming by, through, or under said company, may be absolutely barred and foreclosed of and from all equity of redemption in and to the said mortgaged premises, and every part thereof, forever; and for such other and further relief as to your honors may seem meet in the premises:
41 May it please your honors to grant unto your orator a writ of subpœna to be directed to the said The Little Rock and Fort Smith Railroad Company, the said Thomas C. Peek, John H. Haney, John J. Clendennin, Cornelius Harley, Robert C. Bruce, and Harvey Lewis, as they are surviving partners of the late firm of Bruce, Brother ane Company; Augustus H. Garland and Lucius B. Nash, late copart-

ners under the firm name of Garland and Nash; Augustus H. Garland, Henry Kyles, Uriah M. Rose, John G. Steacy, and John P. Garston, surviving partners of the late firm of Pierce, Steacy and Garston; Wilson B. Gibson, Benton J. Brown, Andrew B. Battelle and John G. Battelle, copartners under the firm name of Battelle and Company, and the Saint Louis Railway Supplies Manufacturing Company, commanding them and each of them, at a certain time and under a certain penalty therein to be limited, personally to appear before this honorable court, and then and there full, true, and perfect answers make to all and singular the premises, and further to stand to, perform and abide such further order, direction, and decree therein as to this honorable court shall seem meet.

HENRY W. PAINE, *Trustee*,
By his attorney, C. W. HUNTINGTON, T. D. W. YONLEY.
CLARK AND WILLIAMS,
Solicitors and of Counsel for Complainant.

UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Then the above named C. W. Huntington personally appeared and made out that he was duly authorized by said Henry W. Paine to sign the aforesaid bill of complaint; that he has read the aforesaid bill and knows the contents thereof; that the allegations contained therein are true, so far as they are made upon his information and belief, and so far as they are stated upon the information and belief of others he believes them to be true.

C. W. HUNTINGTON.

42 Subscribed and sworn to before me this twenty-second day of May, A. D. eighteen hundred and seventy-four.

HENRY C. CALDWELL,
U. S. Dist. Judge.

We bind ourselves to pay all cost of plaintiff in this suit.
May 12th, 1874.

CLARK AND WILLIAMS.

Filed & writ issued May 12, 1874.

RALPH L. GOODRICH, *Clerk.*

43 EXHIBIT A.

This indenture, made the twenty-second day of December, in the year of our Lord one thousand eight hundred and sixty-nine, between the Little Rock and Fort Smith Railroad Company, a corporation existing under the laws of the State of Arkansas, of the first part, and Henry W. Paine and Samuel T. Dana, both of the State of Massachusetts, of the second part.

Whereas, in pursuance of the powers and authorities in it duly vested, the said party of the first part hath resolved to issue and negotiate a series of three thousand five hundred bonds, each of one thousand dollars, numbered respectively from one to thirty-five hundred inclusively, and to amount in the aggregate to three millions five hundred thousand dollars; which said bonds are to be all equally secured by these presents, and are to be of like tenor and in the form following, viz:

UNITED STATES OF AMERICA, STATE OF ARKANSAS.

THE LITTLE ROCK AND FORT SMITH RAILROAD COMPANY.

No. .] *First mortgage bond.* [$1,000.

Know all men by these presents that the Little Rock and Fort Smith Railroad Company, a corporation existing under the laws of the State of Arkansas, is indebted to the bearer hereof in the sum of one thousand dollars, gold coin of the United States of America, which sum the said company promises to pay to the bearer hereof on the first day of January, in the year one thousand nine hundred, at the city of Boston, Massachusetts, with interest thereon at the rate of six per centum per annum, payable semi-annually in gold coin of the United States, free from any United States Government tax, at said city of Boston, on the first day of July and January in each year, upon presentation and surrender of the coupons hereto annexed as they severally become due; and in case of any nonpayment of any half yearly instalment of interest which shall have become payable and shall have been demanded, and the continuance of such default for the period of three months after any such demand, the principal of this bond shall become due in the manner and with the effect provided in the deed of trust, or mortgage, securing the payment of the same hereinafter mentioned.

This bond is one of a series of thirty-five hundred bonds, of like tenor and date, numbered respectively from one to three thousand five hundred inclusively, and amounting in the aggregate to three millions five hundred thousand dollars, the payment of each and all of which is equally secured by a deed of trust, or mortgage, bearing date the twenty-second day of December, eighteen hundred and sixty-nine, duly executed and delivered by the said railroad company to Henry W. Paine and Samuel T. Dana, trustees, covering the railroad of the said company and its equipments, appurtenances, franchises, and things in the said deed of trust or mortgage mentioned or described.

This bond shall pass by delivery, or it may be registered by its owner in the books of the company at the transfer agency of said company in the city of Boston. After a registration of ownership certified thereon by the transfer agent of the company, no transfer, except upon the books of the company, shall be valid unless the last transfer shall have been to bearer and transferability by delivery thereby restored; but this bond shall continue subject to successive registrations and transfers to bearer as aforesaid, at the option of the holder.

This bond shall not become obligatory until it shall have been authenticated by a certificate indorsed hereon and signed by the trustees named above, or the survivor of them, or their successors as such trustees.

In witness whereof the said company has caused its corporate seal to be hereto affixed, and the same to be attested by the signatures of its president and treasurer, and has also caused the coupons hereto annexed to be signed by its treasurer, this twenty-second day of December, in the year one thousand eight hundred and sixty-nine.

President.

Treasurer.

Now, therefore, this indenture witnesseth: That for and in considera-

tion of the premises, and of the sum of one dollar to it duly paid by the said parties of the second part, and in order to secure the payment of the principal and interest of the said bonds according to the tenor thereof, and of the coupons thereto annexed, the said party of the first part hereto has granted, bargained, and sold, and by these presents does grant, bargain, sell, convey, and transfer unto the said parties of the second part as joint tenants, and not as tenants in common, and the survivor of them and their successors and assigns, all and singular the railroad of the party of the first part, or which the said party of the first part is by law authorized to construct, being the line of railroad hereto known or hereafter to be known as the Little Rock and Fort Smith Railroad, as the same is and hereafter shall be constructed from the city of Little Rock, in the county of Pulaski, and State of Arkansas, to the city of Fort Smith, in the county of Sebastian, and State aforesaid, near the western boundary line of said State of Arkansas, including all the railways, branches, ways, rights of way, all tracks, bridges, viaducts, culverts, fences, depots, station houses, engine houses, car houses, freight houses, wood houses, water stations, machine shops, and all other buildings and structures, with the lands appurtenant to the same, and all locomotives, tenders, cars, and other rolling stock or equipments, and all machinery, tools, implements, fuel, materials, and all other personal property of every nature, kind, and description whatsoever, now held or required, or hereafter to be held or acquired, by the said company, its successors, or assigns, for use in connection with the railroads or branches of the party of the first part, or with any part thereof, or with the business of the same; and also all franchises connected with or relating to the said railroad or branches, or to the construction, maintenance or use of the said railroad or branches, and all the franchises, rights, and things of whatsoever name or nature now held or hereafter to be acquired by the said party of the first part or its successors, together with all and singular the tenements, hereditaments, and appurtenances to the said railroad, branches, lands, and premises, or either thereof, belonging or in any wise appertaining; and the reversion and reversions, remainder and remainders, tolls, incomes, revenues, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in and to the same, and any and every part thereof, with the appurtenances, excepting and reserving, however, all the lands which heretofore have been, or hereafter may be, granted to the said The Little Rock and Fort Smith Railroad Company by the Congress of the United States or by the State of Arkansas, and all such lands as heretofore have been, or hereafter may be, given, granted, or conveyed to said company in payment for subscriptions to its capital stock, or otherwise, all which said lands (with the exception of the ways, rights of way, and real estate, hereinbefore particularly and specifically named or mentioned) are hereby reserved and excepted.

44

To have and to hold the above mentioned and described railroad, branches, real estate, personal property and premises, with the appurtenances, and except as hereinbefore reserved, unto the said parties of the second part as joint tenants, and not as tenants in common, and to the survivor of them and their successors and assigns, to the only proper use, benefit and behoof of the said parties of the second part, and the survivor of them, and their successors and assigns, in trust nevertheless for the purposes herein expressed, to wit:

ARTICLE FIRST. Until default shall be made by the said party of the

first part, its successors or assigns, in the payment of the principal or interest, or some part thereof, of the said bonds, or some one of them, or in some other requirement hereof, the said party of the first part, its successors and assigns, shall be suffered and permitted to possess, manage, operate and enjoy the said railroad and branches, with its equipments and appurtenances, and also the lands and premises, property and franchises hereinbefore described; and to receive, take and use the tolls, incomes, revenues, rents, issues and profits thereof, in the same manner and with the same effect as if this mortgage had not been made.

ARTICLE SECOND. In case, first, default shall be made in the payment of any interest on any of the said bonds, according to the tenor thereof, or of the coupons thereto annexed, or in the payment of any part of the principal of said bonds, or any of them, when the same shall become payable, and any such default shall continue for the period of three months; or secondly, in case default shall be made in the performance or observance of any other covenant of the party of the first part herein contained, and such last mentioned default shall continue for the period of six months, then, and in either of such cases, it shall be lawful for the said trustees, or the survivor of them, or their successors, personally, or by their or his attorneys or agents, the said default or failure still continuing, upon the written request of the holder or holders of one hundred bonds secured by this instrument, or on their own motion, to enter into and upon, and take possession of, all and singular the railroads, lands, personal property and premises hereby conveyed, or intended so to be, and each and every part thereof, without any let or hindrance of or from the said parties of the first part, and to have, hold, possess, use and employ the same, operating by their or his superintendents, managers, receivers or servants, or other attorneys or agents, the said railroads, and conducting the business thereof, and making from time to time all repairs and replacements, and such useful alterations, additions and improvements thereto as may seem to them or him to be judicious, and to collect and receive all tolls, freight, incomes, rents, issues and profits of the said railroads, lands, personal property and premises, and of every part and parcel thereof, except as hereinbefore reserved; and after deducting the expenses of operating the said railroads and conducting the business thereof, and all the expenses incurred in the holding and management of said lands, and of all the said repairs, replacements, alterations, additions, and improvements, and all payments which may be made for taxes and assessments upon the said premises, or any part or parcel thereof, as well as just compensation for his or their own services and for the services of such attorneys and counsel as may have been by him or them employed, to apply the moneys arising as aforesaid to the payment of interest on the said bonds, in the order in which such interest shall have become payable, ratably to the persons holding the coupons evidencing the right to such interest; and after paying all interest which shall have become due, to apply the said moneys to the payment of the principal of such of the said bonds as may then be due and unpaid, ratably and without discrimination or preference; and if, after satisfaction thereof, a surplus shall remain, to pay over such surplus to the said company, its successors or assigns, or as any court of competent jurisdiction shall order.

ARTICLE THIRD. In case default shall be made as aforesaid, and shall continue for the period of six months as aforesaid, it shall likewise be lawful for the said trustees, or the survivor of them, or their successors, after entry as aforesaid, or other entry, or without entry, personally or by his or their attorneys or agents, to sell and dispose of all and singu-

lar the railroads, lands, personal property and premises hereby conveyed or intended so to be at public auction, in the city of Little Rock, in the county of Pulaski, or at such other place within the State of Arkansas as the said trustees, or the survivor of them, or their successors shall designate, and at such time as he or they may appoint, having first given notice of the place and the time of such sale by advertisement, published not less than three times a week for six weeks in one or more newspapers published in the cities of New York and Boston, and also in one or more newspapers published in the State of Arkansas, and wherever else required by law, and to adjourn the said sale from time to time, in their or his discretion; and if so adjourning, to make the same, without further notice, at the time and place to which the same may be so finally adjourned, and to make and deliver to the purchaser or purchasers of the said premises good and sufficient deed or deeds in the law for the same in fee simple; which sale, made as aforesaid, shall be a perpetual bar, both in law and equity, against the said party of the first part, its successors and assigns and all other persons claiming or to claim the said premises, or any part or parcel thereof, by, from, through or under the said party of the first part, its successors or assigns; and after deducting from the proceeds of such sale just allowances for all expenses thereof, including attorneys' and counsel fees and all other expenses, advances or liabilities which may have been made or incurred by the said trustees in respect to the said railroad, lands, premises or any part or parcel thereof, or in operating or maintaining the said railroad or any part thereof, or in managing the business thereof, while in their or his possession, and in arranging for and completing the sale aforesaid, and all the payments which may have been made by him or them for taxes or assessments on the said premises, or any part thereof, as well as compensation for his or their own services, to apply the said proceeds to the payment of the principal of such of the said bonds as may be at that time unpaid, whether or not the same shall have previously become due, and of the interest which shall at that time have accrued on the said principal and be unpaid, without discrimination or preference, but ratably to the aggregate amount of such unpaid principal and accrued and unpaid interest; and if, after payment of the same in full, a surplus shall remain, to pay over such surplus to the said company or render the same as any court of competent jurisdiction shall order; it being expressly agreed and understood that in no case shall any advantage be taken of any valuation, appraisement, or extension laws by the said party of the first part, nor of any injunction or stay of proceedings, or any process to be applied for or obtained by it to prevent the entry, possession or use of said railroad and premises, as provided in article second of this instrument, or to prevent such entry and sale as aforesaid.

And it is hereby declared and agreed that the receipt of the said trustees, or of such of them as shall make such sale, shall be a sufficient discharge to the purchaser or purchasers of the premises which shall be sold as aforesaid, for his or their purchase money, and that such purchaser or purchasers, his or their heirs, executors or administrators, shall not, after payment thereof, and having such receipt be liable to see to the application of such purchase money upon or for the trusts or purposes of these presents, or be in any manner whatever answerable for any loss, misapplication or non-application of such purchase money, or of any part thereof, or be obliged to inquire into the necessity, expediency or authority of or for any such sale.

ARTICLE FOURTH. In case default shall be made in the payment of any half year's interest on any of the said bonds, at the time and in

45 the manner in the coupon issued therewith provided, the said coupon having been presented and the payment of the interest therein specified having been demanded, and such default shall continue for the period of three months after the said coupon shall have become due, and been demanded as aforesaid, then and thereupon the principal of all the said bonds shall, at the election of the trustees, become immediately due and payable.

ARTICLE FIFTH. The said trustees shall also, in their discretion, have full power to convey or release, upon the written request of the party of the first part, any lands acquired or held for the purposes of stations, depots, shops or other buildings, and shall also have power to convey or release as aforesaid, on like request, any lands or property which in their judgment shall not be necessary for use in connection with the said railroad, or which may have been held for a supply of fuel, gravel or other material; and also to convey or release as aforesaid, on like request, any lands not occupied by the track, which may become disused by reason of a change of the location of any station house, depot, shop, or other adjacent building connected with the said railroad, or any part thereof, and such lands not occupied by the track and adjacent to such station-house, depot, shop or other building as the said company may deem expedient to disuse or abandon by reason of such change, and to consent to any such change, and to such other changes in the location of the track, or depot, or other buildings as in their judgment shall have become expedient, and to make and deliver the instruments necessary or proper to carry the same into effect; but any lands which may be acquired for permanent use in substitution for any so released shall be conveyed to the trustees upon the trusts of these presents; and the trustees shall also have full power to allow the said company, from time to time, to dispose of, according to its discretion, such portions of the equipment, machinery, and implements at any time held or acquired for the use of the said railroad, as may have become unfit for such use, replacing the same by new, and which shall be conveyed by the said company to the trustees, and made subject to the lien and operation of these presents.

ARTICLE SIXTH. If the party of the first part shall well and truly pay, or cause to be paid, the principal of the said bonds when the same shall become due, and all interest thereon when the same shall have become payable and shall have been demanded, according to the tenor of said bonds and of the coupons thereunto annexed, and comply with all other requirements hereof, according to the true intent and meaning of these presents, then and in that case, the estate, right, title and interest of the said parties of the second part, and survivor of them, and their successors in the trusts hereby created, shall cease, determine and become void, otherwise the same shall be and remain in full force and virtue.

ARTICLE SEVENTH. It is mutually agreed by and between the parties hereto that the word "trustees," as used in these presents, shall be construed to mean the trustees or trustee for the time being, whether original or substituted, and whenever a vacancy shall exist, to mean the surviving or continuing trustee; and such trustee shall, during such vacancy, be competent to exercise all the powers by these presents granted to or conferred upon the parties of the second part. And it is mutually agreed by and between the parties hereto that neither of the said trustees shall be in any manner responsible for any default or misconduct of any other of them; that the said trustees shall be entitled to just compensation for all services which they may hereafter render in their trust, to be paid by the said company, or out of the income of the property, and for

that purpose may at any time apply to the courts without notice to any person except the said party of the first part, its successors or assigns; that either of said trustees, or any successor, may resign or discharge himself of the trust created by these presents by notice in writing to the said company and to the existing trustee, if there be such, three months before such resignation shall take effect, or such shorter time as they may accept as adequate notice, and upon the due execution of the conveyances hereinafter required.

That in case at any time hereafter either of the said trustees, or any trustees or trustee hereafter appointed, shall die or resign, or become incapable or unfit to act in the said trust, a successor or successors to such trustee or trustees shall be appointed by the surviving or continuing trustee, with the consent of the said company; and the trustee or trustees so appointed, with the trustee surviving or continuing, shall thereupon become vested with all and singular the powers, authorities and estates granted to or conferred upon the parties of the second party by these presents, and all the rights and interests requisite to enable them or him to execute the purposes of this trust, without any further assurance or conveyance, so far as such effect may be lawful; but the surviving or continuing trustee shall immediately execute all such conveyances and other instruments as may be fit or expedient for the purpose of assuring the legal estate in the premises jointly with himself to the trustee so appointed; and upon the death, resignation or removal by any court of competent jurisdiction of any trustee, or an appointment in their or his place in pursuance of these presents, all their or his powers and authorities by virtue hereof shall cease; and all the estate, right, title and interest in the said premises of any trustee so dying, resigning or being removed, shall, if there be a co-trustee surviving or continuing in office, wholly cease and determine; but the said trustee so resigning or being removed, shall, on the written request of the new trustee who may be appointed, immediately execute a deed or deeds of conveyance to vest in such new trustee, jointly with the continuing trustee, and upon the trusts herein expressed, all the property, rights and franchises which may be at that time held upon the said trusts: provided, nevertheless, and it is hereby declared and agreed, that in case it shall at any time hereafter prove impracticable, after reasonable exertions, to appoint, in the manner hereinbefore provided, a successor in any vacancy which may have happened in said trust, application in behalf of all the holders of the bonds secured hereby may be made by the surviving or continuing trustee, or if the trust be wholly vacant, by holders of the bonds secured hereby to the aggregate amount of one hundred thousand dollars, to any court of competent jurisdiction in the State of Arkansas, for the appointment of a new trustee or new trustees.

And the said party of the first part, for itself, its successors and assigns, in consideration of the premises, and of one dollar to it duly paid by the said party of the second part, the receipt whereof is hereby acknowledged, hereby covenants and agrees to and with the said parties of the second part, and the survivor of them, and their successors and assigns, that whenever, and as often as the said party of the first part, its successors or assigns, shall hereinafter acquire, except as hereinbefore reserved and excepted, any lands, or any equipment, or any other property or things, of whatever name or nature, for use in connection with the said railroad, or of any part of either thereof, or of any other railroad which the said company is authorized by law to construct, or shall acquire any other property, rights, franchises or things whatsoever, the said party of the first part, its successors and assigns, shall and will ac-

quire, possess and hold the same, and every part and parcel thereof, except as hereinbefore reserved and excepted, upon and subject to the trusts of this indenture, until conveyance thereof, in pursuance of the covenant next hereinafter contained, shall be duly made and delivered to the said parties of the second part, or the survivor of them, or their successors in the trust by these presents created.

And the said party of the first part, for itself, its successors and assigns, in consideration of the premises, and of one dollar to it duly paid by the said parties of the second part, the receipt whereof is hereby acknowledged, hereby covenants and agrees to and with the said parties of the second part, and the survivor of them, their successors and assigns, that except as hereinbefore reserved and excepted, the said party of the first part, its successors and assigns, shall and will, from time to time, and at all times hereafter, and as often as thereunto requested by the trustees under this indenture, execute, deliver and acknowledge all such further deeds, conveyances and assurances in the law for the better assuring unto the said parties of the second part, the survivor of them, and their successors in said trust, upon the trust herein expressed, the railroads, equipments, appurtenances, franchises, property and things hereinbefore mentioned, and to which the said company is or may hereafter for any reason become entitled, or which the said company, its successors or assigns, may in any manner acquire, and also all other property, rights, franchises and things whatsoever which may hereafter be acquired by the said party of the first part, its successors or assigns, as by the said trustees, or their counsel learned in the law, shall be reasonably advised, devised or required, except as hereinbefore reserved and excepted. And it is mutually understood and agreed between
46 the parties hereto, that the said parties of the second part, and the survivor of them, and their successors in said trusts, shall be accountable, liable or responsible for reasonable care and diligence only in the performance of the trusts hereby created, and in the management of the said estate and property, and shall not be accountable, liable or responsible for the acts of any agent, depository, or substitute employed by him or them, when such agent, depository, or substitute shall have been selected with reasonable discretion.

In witness whereof the said party of the first part has caused its corporate seal to be hereto affixed, and the same to be attested by the signatures of its president and secretary, and the said parties of the second part have hereunto set their hands and seals to evidence their acceptance of the trust hereby created, the day and year first above written.

(Signed) C. G. SCOTT,
President.

[CORPORATE SEAL.] J. H. HANEY,
Secretary.

(Signed) HENRY W. PAINE. [SEAL.]
(Signed) SAMUEL T. DANA. [SEAL.]

Signed, sealed, and delivered in the presence of—
(Signed) T. B. HENNSBERRY,
(Signed) HENRY WARDWELL,
(Signed) ARTHUR E. JONES,
To H. W. P. & S. T. D.

47 STATE OF ARKANSAS,
County of Pulaski:

This may certify that on the twenty-second day of December, A. D. eighteen hundred and sixty-nine, before me, Thomas B. Henneberry, an acting and duly commissioned justice of the peace in and for said county and State, and by law duly authorized to take acknowledgments and proofs of deeds and other writings, and to administer oaths and affidavits, to be used and recorded in said State of Arkansas, personally appeared Charles G. Scott, president of the Little Rock and Fort Smith Railroad Company, to me individually well known to be the person whose name appears upon and is subscribed to the within and foregoing deed, and he, being sworn, did depose and say that he was president of said company at the date of the execution of the foregoing instrument, and still is such president; and that said instrument was executed by and under *on* a resolution of the stockholders as well as the directors of said company, and that the said indenture was executed and delivered by the said company as aforesaid, acting through him as such president thereof by virtue of the said resolution as the free act and deed of said company, and for the consideration, uses and purposes therein mentioned and set forth.

And at the same time personally appeared J. H. Haney, to me individually well known to be the person he purports to be in and upon said deed, as one of the signers thereof, who being also duly sworn did depose and say that he was the secretary of said company at the date of the execution of the foregoing indenture; the seal of said company was affixed to said instrument under and by virtue of the aforesaid resolutions, and that the seal thereto attached is the seal of said company, and that he saw the said Charles G. Scott sign and execute said indenture as said president, and that said instrument is the deed of said company for the consideration and purposes therein mentioned and set forth.

48 In witness whereof I have hereto set my hand as such justice of the peace, at my office in the city of Little Rock, in said county of Pulaski, this twenty-second day of December, A. D. eighteen hundred and sixty-nine.

(Signed) THOMAS B. HENNEBERRY,
Justice of the Peace, Pulaski County, State of Arkansas.

Which subpœnas are as follows:

UNITED STATES OF AMERICA,
Eastern District of Arkansas:

The President of the United States to Little Rock and Fort Smith Railroad Company, Thomas C. Peek, J. D. Plose, John H. Haney, John C. Clendennin, Robert C. Bruce, Harvey Lewis, Augustus H. Garland, Lucius B. Nash, Henry Kyles, Uriah M. Rose, Wilson B. Gibson, Benton J. Brown, and John G. Steacy, greeting:

We command and strictly enjoin upon you that, laying all other matters aside, and, notwithstanding any excuse, you, and each of you, be and personally appear before the judges of our circuit court of the United States, in and for the eastern district of Arkansas, in chancery sitting, on the first day of June, A. D. one thousand eight hundred and seventy-four, it being the first Monday of June next, wheresoever the said court shall then be, and there to answer a bill of complaint ex-

hibited against you in our said court by Henry W. Paine, trustee; and to do further and receive what our said court shall have considered in that behalf. And this you are not to omit under penalty of what the law directs.

In testimony whereof Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, has caused the seal of said circuit court to be hereunto affixed, this twelfth day of May, A. D. 1874,
49 and in the ninety-eighth year of our Independence.

Attest:

RALPH L. GOODRICH, *Clerk.*

N. B.—The defendants are required to enter their appearance in the above cause in the clerk's office of this court, on or before the first day of June, one thousand eight hundred and seventy-four, or the bill will be taken pro confesso against them.

RALPH L. GOODRICH, *Clerk.*

I have served the within subpœna on the within named Little Rock and Fort Smith Railroad Company by delivering to John C. Peay, secretary of the Little Rock and Fort Smith Railroad, of the board whereof B. F. Danley is president, by copy, said Danley being non est; also served on Little Rock and Fort Smith Railroad Company by delivering to H. M. Cooper, secretary of board whereof Thomas M. Bowen is president, by copy, said Bowen being absent from the State; and also John J. Clendennin, Benton J. Brown, Augustus H. Garland, Harvey Lewis, John H. Haney, Thomas C. Peek, John G. Steacy, and Wilson B. Gibson and Henry Kyles, by delivering to them a true copy of the same, and U. M. Rose by delivering to Mrs. Rose, wife of U. M. Rose, a number of his family over the age of fifteen years old, at his usual place of residence in Little Rock, and a copy of the same, May thirteenth, also served upon J. D. Plose, by delivering to him a copy of the same at Dardanelle, Yell County, Arkansas, May fourteenth, eighteen hundred and seventy-four, and upon Robert C. Bruce by delivering to him a copy of same at the city of Memphis, Tenn., May 16th, 1874. (Lucius B. Nash non est.)

ISAAC C. MILLS,
U. S. Marshal, E. D. Ark's.

Returned & filed May 23, 1874.

RALPH L. GOODRICH, *Clerk.*

50 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

The President of the United States to Andrew B. Battelle and John G. Battelle, who are served with the Little Rock and For' Smith Railroad Company et al., greeting:

We command and strictly enjoin upon you that, laying all other matters aside and notwithstanding any excuse, you, and each of you, be and personally appear before the judges of our circuit court of the United States in and for the eastern district of Arkansas, in chancery sitting, on the sixth day of July, A. D. eighteen hundred and seventy-four, it being the first Monday of July next, wheresoever the said court shall then be, and there to answer a bill of complaint exhibited against you in our said court by Henry W. Paine, as trustee, and to do further and receive what our said court shall have considered in that behalf, and this you are not to omit under penalty of what the law directs.

In testimony whereof Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, has caused the seal of said circuit court to be hereunto affixed this twelfth day of May, A. D. eighteen hundred and seventy-four, and in the ninety-eighth year of our Independence.

Attest:

[SEAL.] RALPH L. GOODRICH, *Clerk.*

N. B.—The defendants are required to enter their appearance in the above cause in the clerk's office of this court on or before the first day of July, eighteen hundred and seventy-four, or the bill will be taken pro confesso against them.

RALPH L. GOODRICH, *Clerk.*

51 District of West Tennessee, Memphis, Tennessee.

I have served the within subpœna on the within named John G. Battelle by making known to him the contents and by delivering to him personally a copy of this writ, on June twelfth, eighteen hundred and seventy-four. After diligent search the within named Andrew B. Battelle is not to be found in my district, this thirteenth day of June, A. D. eighteen hundred and seventy-four.

L. B. EATON,
U. S. Marshal for West. Dist. Tenn.,
By W. KOCH,
Deputy Marshal.

Returned and filed, June 17th, 1874.

RALPH L. GOODRICH, *Clerk.*

Before the clerk in vacation, May 26, 1874.

HENRY W. PAINE, AS TRUSTEE,
vs.
LITTLE ROCK AND FOR' SMITH RAILROAD COMPANY ET AL.

Comes the complainant, by Clark and Williams, esquires, his solicitors, and files herein his amended bill of complaint, which amended bill is as follows:

52 UNITED STATES OF AMERICA,
Eastern District of Arkansas, ss:

HENRY W. PAINE, AS TRUSTEE,
vs.
THE LITTLE ROCK AND FORT SMITH RAILROAD COMPANY ET AL. } In equity

And now comes your orator and prays that he may be allowed to amend *amend* the bill of complaint filed in said suit by inserting at the end of paragraph seven, in said bill, the following words, viz: that the honorable the chancellor of said Pulaski chancery court, on the 21st day of May, 1874, ordered and decreed that the supplementary petition, under which the said S. B. Beaumont was appointed as aforesaid, be dismissed for want of equity, and that the order appointing said Beau-

mont such receiver be revoked and set aside, all of which will more fully and at large appear by reference to a certified copy of said order and decree to be in court produced.

CLARK & WILLIAMS.
T. D. W. YONLEY.

Filed May 26, 1874.

RALPH L. GOODRICH, *Clerk.*

53 UNITED STATES OF AMERICA,
Eastern District of Arkansas, ss:

HENRY W. PAINE, TRUSTEE,
vs.
THE LITTLE ROCK AND FORT SMITH RAILroad Company and others. } In equity.

And your orator complains and says that since the filing of his bill of complaint in the above-entitled suit, Charles W. Huntingdon, of Boston, Massachusetts, has been associated with me as a trustee pursuant to the terms of said mortgage in the place and stead of Samuel T. Dana, who did, on the thirteenth day of May, in the year eighteen hundred and seventy-one, resign his said trust as in and by paragraph third of said bill of complaint is more specifically alleged, to which said paragraph reference is to be had.

Now, therefore, your orator prays that the said Huntingdon may be joined and made a party plaintiff in the above-entitled suit, and admitted to the prosecution of the same.

54 And as in duty bound will ever pray.

CLARK AND WILLIAMS,
T. D. W. YONLEY,
Att'ys for Pl'ffs.

Filed May 26, 1874.

RALPH L. GOODRICH,
Clerk.

UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Be it remembered, that at a circuit court of the United States of America, in and for the eastern district of Arkansas, begun and holden on Monday, the thirteenth day of April, Anno Domini one thousand eight hundred and seventy-four, at the United States court room in the city of little Rock, Arkansas, the honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit, on July sixth, eighteen hundred and seventy-four:

HENRY W. PAINE AND CHARLES W. HUNTington, trustees,
vs.
LITTLE ROCK AND FORT SMITH RAILROAD Company et al.

55 On this day come the plaintiffs by their attorneys and file their petition to amend the original and amended bill herein, representing that since the commencement of this suit, to wit, on the twenty-sixth day of May last, Samuel H. Gookin, of Boston Massachusetts, was duly appointed trustee in the said mortgage with the said Charles W. Huntington, successor to Samuel T. Dana, in the

place and stead of Henry W. Paine, resigned. And thereupon on motion of said plaintiffs it is ordered that said Samuel H. Gookin be made party plaintiff in this suit in the place and stead of the said Henry W. Paine, and that said suit proceed hereafter in the name of said Gookin and Huntington as party plaintiffs.

HENRY W. PAINE, TRUSTEE,
vs.
LITTLE ROCK RAILROAD COMPANY ET AL.

And on this day came the plaintiff by Clark and Williams and Yonley, his attorneys, and upon the petition heretofore filed to amend the bill by joining Charles W. Huntington, of Boston, Massachusetts, who was duly associated with said Henry W. Paine as trustee in the said mortgage in the place and stead Samuel T. Dana, resigned, it is ordered that said Huntington be and is hereby associated with the said Paine as a party plaintiff herein. And it is further ordered in pursuance of the prayer of said petition that said plaintiffs have leave to amend their said petition by inserting at the end of paragraph seven in said bill the following words, to wit: "That the honorable the chancellor of said Pulaski chancery court, on the twenty-first day of May, eighteen hundred and seventy-four, ordered and decreed that the supplementary petition under which the said S. B. Beaumont was appointed as aforesaid be dismissed for want of equity *of equity*, and that the order appointing the said Beaumont such receiver be revoked and set aside; all of which will more fully and at large appear by reference to a certified copy of said order and decree to be in court produced," which is accordingly done.

56 Which petitions are as follows:

UNITED STATES OF AMERICA,
Eastern District of Arkansas:

HENRY W. PAINE, TRUSTEE,
vs.
LITTLE ROCK AND FORT SMITH RAILROAD Company and others.

And your orator complains and says that since the filing of the said bill of complaint herein and since the resignation of the said Samuel T. Dana, and the association of the said Charles W. Huntington in his place and stead as trustee, the said Henry W. Paine has also resigned his trusteeship, and Samuel H. Gookin, of the city of Boston, in the State of Massachusetts, has been associated with your orator, the said Charles W. Huntington, as a trustee, pursuant to the terms of said mortgage, in the place and stead of the said Henry W. Paine so resigned as aforesaid, as by a certain transcript from the records of the board of directors of said company duly certified hereto annexed, marked Exhibit A, to this amended petition, reference thereto being had, will appear.

Now, therefore, your orators pray that the said Samuel H. Gookin may be joined with the said Charles W. Huntington and made a party

plaintiff with him herein, and that the said cause may hereafter proceed in their names as parties plaintiff.

And your orators will ever pray, &c.

CLARK AND WILLIAMS, &
T. D. W. YONLEY,
For Plaintiffs.

Filed July 6, 1876.

RALPH L. GOODRICH,
Clerk.

At a meeting of the board of directors of the Little Rock and Fort Smith Railroad Company, held at the city of Little Rock on the twentieth day of May, eighteen hundred and seventy-four, the following preamble and resolution was unanimously adopted, viz:

57 Whereas Samuel T. Dana, who was associated with Henry W. Paine in the deed of trust and mortgage of the said road of the Little Rock and Fort Smith Railroad Company, bearing date the twenty-second day of December, eighteen hundred and sixty-nine, and by said company executed, did, on or about the twenty-first day of May, eighteen hundred and seventy-one, resign his said trust and discharge himself therefrom by giving notice in writing of such resignation and to the continuing trustee; and whereas the said Henry W. Paine did, on the thirty-first day of March, eighteen hundred and seventy-four, by virtue of the power vested by said deed of trust and mortgage as continuing trustee, appoint Charles W. Huntingdon, of Boston, in the county of Suffolk, and the State of Massachusetts, to be the successor of said Dana in said trust, subject to the consent of said company; and whereas the said Samuel T. Dana, who was associated Henry W. Paine and William B. Stevens in the deed of trust and mortgage of the lands of said company bearing date the twentieth day of June, eighteen hundred and seventy, and by said company executed, did, on or about the twenty-first day of May, eighteen hundred and seventy-one, resign his said trust and discharge himself thereof by giving notice in writing of such resignation to said company and to the continuing trustee; and whereas the said Paine and Stevens did by virtue of the power vested in them by said deed of trust and mortgage as the continuing trustees appoint Charles W. Huntingdon, of Boston, in the county of Suffolk, and the State of Massachusetts, to be the successor of said Dana, in said trust, subject to the consent of said company:

Now, therefore, be it resolved, that we do hereby ratify and approve the nomination of the said Huntingdon as the successor of the said Dana in the trusts created by each and both of the aforesaid deed of mortgage.

B. F. DANLEY,
President.

Filed July 6, 1874.

RALPH L. GOODRICH,
Clerk.

58 At a meeting of the board of directors of the Little Rock and Fort Smith Railroad Company, held on the twenty-sixth day of May, eighteen hundred and seventy-four, at the city of Little Rock, the following preamble and resolution was unanimously adopted, viz:

Whereas Henry W. Paine, who was associated with Charles W. Huntingdon, successor to Samuel T. Dana, in the deed of trust and mortgage of the said road of the Little Rock and Fort Smith Railroad Company, bearing date the twenty-second day of December, eighteen hundred and

sixty-nine, and by said company executed, did, on or about the twenty-sixth day of May, eighteen hundred and seventy-four, resign his said trust and discharge himself therefrom, by giving notice in writing of such resignation to the company and to the continuing trustee; and whereas the said Charles W. Huntingdon, successor to the said Samuel T. Dana aforesaid, did, on the said twenty-sixth day of May, eighteen hundred and seventy-four, by virtue of the power vested by the said deed of trust and mortgage, as continuing trustee, appoint Samuel H. Gookin, of Boston, in the county of Suffolk and State of Massachusetts, to be the successor of said Paine in said trust, subject to the consent of said company:

Now, therefore, be it resolved, that we do hereby ratify and approve the nomination of the said Samuel H. Gookin as the successor to the said Henry W. Paine, in the trust created by the said deed of trust and deed of mortgage.

OFFICE SECRETARY LITTLE ROCK AND
FORT SMITH RAILROAD COMPANY,
Little Rock, July third, eighteen hundred and seventy-four.

I, John C. Peay, secretary of the board of directors of the Little Rock and Fort Smith Railroad Company, do hereby certify that the foregoing preamble and resolution is a true copy, taken from the records of the said board of directors.

59 Given under my hand as secretary of said board of directors, and the seal of said company, this third day of July, eighteen hundred and seventy-four.

JNO. C. PEAY,
Secretary L. R. & Ft. S. R. R. Co.

Filed July 6, 1874.

RALPH L. GOODRICH, *Clerk.*

And on October third, 1874, as follows:

United States circuit court, eastern district of Arkansas.

CHARLES W. HUNTINGDON & SAMUEL H. Gookin
vs.
LITTLE ROCK AND FORT SMITH RAILROAD Company et al.

On this day come the plaintiffs, by their solicitors, Clark and Williams and Yonley, and present their two several petitions under oath, in writing, praying for orders permitting them to withdraw their replications to answers hereinbefore filed, and to amend their bill, by adding as defendants thereto, with apt words to charge them as such, the following-named persons, to wit: Elisha Atkins, in his capacity of one of the trustees under the land mortgage executed by said railroad company; Elisha Atkins, in his individual capacity; Benjamin E. Bates, Ebenezer T. Farrington, Francis M. Weld, Henry Saltonstall, John Gardner, Thomas H. Perkins and Daniel D. Stackpole, all of the city of Boston, in the State of Massachusetts; and also further to amend the same as set forth in an amended petition, here presented and prayed to be filed in the cause. And, it appearing that due notice has been given to all parties entitled to notice of such application, and that the

other provisions of the rules of this court in such case has been fully complied , it is hereby ordered by me that the plaintiffs have
60 leave to withdraw their replications and to amend their said bill as prayed for, and said amendments are accordingly filed.

H. C. CALDWELL,
District Judge.

Which petitions are as follows:

Circuit court of the United States, eastern district of Arkansas, *ss:*

C. W. HUNTINGDON AND SAMUEL H. GOOKIN, trustees,
vs.
THE LITTLE ROCK AND FORT SMITH RAILroad Company et als.

To the honorable the judges of the circuit court of the United States, for the district aforesaid:

Your petitioners, Charles W. Huntingdon and Samuel H. Gookin, respectfully pray that they may have leave to amend their bill, heretofore filed, by adding as defendants thereto, with apt words to charge them, the following named persons, viz: Elisha Atkins, in his capacity of one of the trustees under the land mortgage executed by said railroad company; Elisha Atkins, in his individual capacity; Benjamin E. Bates, Ebenezer T. Farrington, Francis M. Weld, Henry Shattuck, John Gardner, Thomas H. Perkins and David D. Stackpole, all of Bost'n, in the State of Massachusetts, and citizens of State.

And your petitioners shall ever pray, &c.

C. W. HUNTINGDON *for self, &*
SAMUEL H. GOOKIN,
Trustees.

61 EASTERN DISTRICT OF ARKANSAS, *ss:*

I, Sol. F. Clark, attorney for the plaintiffs in the foregoing petition, being duly sworn, do depose and say that the petition and application is not made for vexation and delay.

SOL. F. CLARK.

Sworn to and subscribed before me this third day of October, one thousand eight hundred and seventy-four.

RALPH L. GOODRICH,
U. S. Com'r.

Filed October 3, 1874.

RALPH L. GOODRICH, *Clerk.*

62 Circuit court of the United States, eastern district of Arkansas, *ss:*

C. W. HUNTINGDON AND S. H. GOOKIN, TRUStees,
vs.
THE LITTLE ROCK AND FORT SMITH RAILroad Company et als.

To the honorable the judges of the circuit court of the United States, for the district aforesaid:

The petition of your orators showeth that the said The Little Rock

and Fort Smith Railroad Company, the principal defendant in this cause, has not appeared therein or put its answer to said bill. That the defendants U. M. Rose and Benton J. Brown have appeared and filed their demurrer to said bill. That the said John H. Haney and Henry Kyles, judgment creditors of said company, have appeared and filed their answers to said bill, and the remaining defendants have not appeared in said cause, and that your petitioners have filed replications to the answers of said Haney and Kyles, but no witnesses have been examined by either party. That since the filing of the replications your petitioners have been advised and believe that it is essential to the rights of their cestui que trusts that their bill should be amended in the following particulars, viz:

First. By striking out all that portion of said bill contained in the subdivision thereof marked "fifth," with the exception of the last paragraph in said subdivision, and inserting in lieu thereof the following statement, viz: And your orators, further complaining, aver that for the purpose of aiding in the construction of the railroad of the said The Little Rock and Fort Smith Railroad Company the Congress of
65 the United States granted to the said State of Arkansas and the said State of Arkansas granted and conferred to said railroad company every alternate section of land not mineral and not otherwise reserved or appropriated or to which the right of pre*sum*ption or homestead settlement h d not attached, to the amount of ten alternate sections of land for each mile of said railroad on each side thereof, and within the limit of ten miles on each side, upon condition that unless said railroad company shall fully construct and complete to the satisfaction of the Secretary of the Interior of the United States, as a first-class railroad, one section of twenty miles of said road within three years from the thirteenth day of May, eighteen hundred and sixty-seven, and at least one section of twenty miles of said road in each year thereafter, and the whole of said road within ten years from the twenty-eighth day of May, eighteen hundred and sixty-six, then and in either of said cases all the lands granted as aforesaid and which at the time should be operated to or for the benefit of said railroad or company should revert to the United States; all of which will more fully appear by reference to an act of Congress approved July twenty-eighth, eighteen hundred and sixty-six, entitled "An act to revive and extend the provisions of an act granting the right of *any* and making a grant of lands to the States of Arkansas and Missouri, to aid in the construction of a railroad from a point upon the Mississippi opposite to the mouth of the Ohio River, via Little Rock, to the Texas boundary near Fulton, in Arkansas, with branches to Fort Smith and the Mississippi River, approved February ninth, eighteen hundred and fifty-three, and for other purposes," and also to another act of Congress approved April tenth, eighteen hundred and sixty-nine, entitled "An act to extend the time for the Little Rock and Fort Smith Railroad Company to complete the first section of twenty miles of said road," and also to an act of Congress approved March eighth, eighteen hundred and seventy, entitled "An
64 act to amend an act entitled 'An act to extend the time *of* for the Little Rock and Fort Smith Railroad Company to complete the first section of twenty miles of said road,' approved April tenth eighteen hundred and sixty-nine," and also by reference to an act of the general assembly of said State of Arkansas, approved April twelfth, eighteen hundred and sixty-nine, entitled "An act supplemental to an act to incorporate the Little Rock and Fort Smith Railroad Company, approved January twenty-second, eighteen hundred and

fifty-five," and an act entitled "An act fixing the line of the Little Rock and Fort Smith branch of the Cairo and Fulton Railroad and granting the lands donated by Congress to the State in aid thereof, approved January nineteenth, eighteen hundred and fifty-five."

And your orators further aver that on the twentieth day of June, eighteen hundred and seventy, the said The Little Rock and Fort Smith Railroad Company executed and delivered to the said Henry W. Paine, Samuel T. Dana and William B. Stephens, all of Boston, aforesaid, as trustees, a mortgage, or deed of trust, upon the lands granted and to be acquired as aforesaid, to secure the payment of five thousand *thousand* additional bonds of said company of the denomination of one thousand dollars each, and amounting in the aggregate to five million dollars, payable in lawful money of the United States in thirty years from April first, eighteen hundred and seventy, with interest thereon at the rate of seven per centum per annum, payable on the first day of October and April in each year, free from any United States Government tax, which said mortgage or deed of trust was duly stamped as required by the internal revenue laws of the United States, and duly recorded in the several recording offices required by the laws of the State of Arkansas; that the said Paine, Dana and Stevens have each and all resigned their respective trusts under said mortgage or deed of trust, and your orators, the said Huntingdon and Gookin, and the said Elisha Atkins, have been duly appointed trustees under said mortgage, or deed of trust, pursuant to the terms thereof, or in the place of said Paine, Dana
65 and Stevens, and have accepted said trust and are now in the discharge of the duties thereof; that the holders of the said bonds issued under said last named mortgage or deed of trust are very numerous, but the said defendants Atkins, Bates, Weld, Saltonstall, Gardner, Perkins and Stackpole are among the largest and principal holders of said bonds, and are just and fit representatives of the whole class of bondholders secured by said mortgage or deed of trust.

And your orators say that they are informed and believe, and therefore aver that said railroad company has issued from time to time the whole amount of bonds secured by said last named mortgage upon the lands granted as aforesaid. That said company have made default and failed to pay the coupons or interest amounts attached to the bonds issued under said last-named mortgage, and also the coupons of interest amounts attached to the bonds issued under said railroad mortgage as the same respectively became due and payable from January first, eighteen hundred and seventy-one, to the present time; and said company is still indebted to the holders of each class of said bonds for the amount of interest that has accrued thereon and payable at the times aforesaid, amounting in the aggregate of one million dollars. That said railroad company now is, and for a long time has been, notoriously and hopelessly bankrupt, without credit or the means of establishing a credit. That numerous judgments have been obtained against said *said* company, as hereinafter more particularly set forth, which judgments still remain unsatisfied in whole. That the contemplated line of railroad to Fort Smith is about one hundred and sixty miles in length, but only one hundred miles of said road, viz, from Argenta, upon the north bank of the Arkansas River opposite the city of Little Rock, to the town of Clarksville, in said State, have thus far been constructed within the time required by the aforesaid act of Congress, and sixty miles of said rail-
66 road still remain to be constructed westwardly from Clarksville to Fort Smith. That the Secretary of the Interior of the United States has caused patents to be issued for the lands granted as aforesaid

upon said one hundred miles of railroad already constructed, but the lands granted as aforesaid for the remaining sixty miles of said road will revert to the United States by the terms and conditions of said grant unless said company or railroad shall construct and complete as a first class railroad an additional section of twenty miles of said road on or before the thirteenth day of May, eighteen hundred and seventy-six, and the remaining twenty miles of said road, the same being the entire length thereof, on or before the twenty-eighth day of July, eighteen hundred and seventy-six. That in the judgment of men competent to form and express an opinion upon such subjects, by far the most valuable portion of the lands embraced in said grant are situated beyond the one hundred miles of railroad already constructed. That one great inducement which enabled and led said company to engage in the construction of said road, and which incited the holders of the bonds secured by the mortgage upon the lands granted as aforesaid to purchase said bonds, was the fact that said company would, upon the construction of said road within the times and in the manner required by the aforesaid act of Congress, become vested with the title to the lands granted as aforesaid, and the failure of said company to comply with the terms and conditions of said grant will not only greatly impair the value of the bonds issued upon said lands by depriving said bonds of the security of three hundred and eighty-four thousand acres of land which they would otherwise have, and upon which the faith of which said company issued the said bonds and the holders thereof purchased the same, but seriously retard, if not defeat the completion of said road to Fort Smith. That said railroad has so far been constructed from Argenta to Clarksville, has been operated and maintained for upwards of a year, but the returns from the operation of said road during said period show that said railroad
67 has been, and can only be in its present condition, operated and maintained at a loss, the earnings and income of said road not being sufficient to pay its operating expenses and keep its road-bed, track, and equipments in proper repair. That the road-bed of said railroad already constructed and a number of its bridges, and also its engines, cars, and equipments require immediate renewals and repairs in order to render the same safe for the transportation of passengers, which renewals and repairs demand an expenditure, as your orators are informed and believe, of upwards of fifteen thousand dollars, but said company has no moneys with which to make said renewals and repairs. That said railroad from Argenta to Clarksville is practically no security for the bonds issued under said railroad mortgage by said Paine and Dana. That according to the best estimates which your orators have been enabled to procure, the cost of completing said sixty miles of railroad remaining to be built, and of providing said road with the necessary engines, cars, station-houses, and equipments for operating the same, will amount to about the sum of one million five hundred thousand dollars. That in the judgment of your orators, as well as in that of men competent to form and express an opinion upon such subjects, said railroad if completed to Fort Smith within the times required by the aforesaid act of Congress, will constitute a more valuable security as a finished road than in its present unfinished condition for the bonds issued under its aforesaid mortgage to said Paine and Dana, even though the cost of completing said road from Clarksville to Fort Smith should be a lien upon the entire length of said road prior to that created by said mortgage. That said company has been for so long a time bankrupt that it is utterly powerless to provide the moneys required for completing said road, or any part thereof, and it is the opinion of your orators, and,

as they believe, it is the opinion of a majority of the holders of the bonds secured by each and both of said mortgages, that said land
68 grant will lapse and said railroad will fail to be constructed for many years unless your honors shall appoint a receiver or receivers with authority to take possession of and operate said railroad, and borrow money sufficient to complete said road within the times and in the manner required by the aforesaid act of Congress, and with authority to secure the moneys so borrowed by debentures to be a lien upon said railroad already constructed and that hereafter may be constructed by said receiver or receivers, and also to be a lien upon the lands that may hereafter be acquired under and by virtue of said land grant, such debentures to take precedence of the lien created by said railroad mortgage to said Paine and Dana upon said railroad heretofore constructed and hereafter to be constructed, as well as of the lien created by said land mortgage to said Paine, Dana, and Stevens, so far as the same relates *relates* to the lands hereafter to be acquired upon the completion of said-sixty miles of said railroad; and your orators believe, and therefore aver, that if they are appointed by your honors such receivers, with the powers aforesaid, they will be enabled to borrow moneys sufficient to complete and equip said road within the times and in the manner required by the aforesaid act of Congress."

Second. And that said bill should also be amended by inserting at the end of the last paragraph in subdivision "fifth" of said bill the following, viz: "And your orators further aver that the holders of the bonds issued under said railroad mortgage to said Paine and Dana are very numerous, but your orators have been requested by the holders of upwards of one million of said bonds, who are just and fit representatives of the whole class of bonds issued under said mortgage or deed of trust, to institute proceedings for the foreclosure of said mortgage, and your orators believe such to be the desire of a large majority if not all the holders of said railroad bonds."

69 Third. And that said bill should be also amended in the prayer for relief by striking out the words "to take precedence of said mortgage lien thereon," on page thirty-eight, line nine of said bill as they occur after the words "and that said receiver or receivers be authorized to secure the moneys so borrowed by debentures to be a lien upon said railroad already constructed, and that may be hereafter constructed by said receiver or receivers," and inserting in lieu of the words so *so* stricken out the words following, viz: "And also to be a lien upon the lands that may hereafter be acquired under and by virtue of said land grant, such debentures to take precedence of the lien created by said railroad mortgage to said Paine and Dana upon said heretofore constructed and hereafter to be constructed, as well as of the lien created by said land mortgage to said Paine, Dana and Stevens so far as the same relates to the lands hereafter to be acquired upon the corporation of said sixty miles of railroad."

Your petitioners therefore pray that they may be at liberty to withdraw their said replications and amend their bill as proposed above, or otherwise as they shall be advised, upon such terms as your honors may prescribe.

And your petitioners shall ever pray, &c.

C. W. HUNTINGDON, for self, and
S. H. GOOKIN, *Trustees.*

STATE OF ARKANSAS, *East Dist.:*

I, Sol. F. Clark, attorney for plaintiffs, being duly sworn, do depose and say that I believe the matters and things in the foregoing petition

to be true, and that the application to withdraw replications and to amend the bill in accordance with the prayer of petition is not made for vexation and delay.

SOL. F. CLARK.

70 Subscribed and sworn to before me this third day of October, eighteen hundred and seventy-four.

RALPH L. GOODRICH,
U. S. Comm'r.

Filed & writ issued Octo. 3, 1874.

RALPH L. GOODRICH, *Clerk.*

Which subpœna is as follows:

UNITED STATES OF AMERICA,
Eastern District of Arkansas:

The President of the United States, to Elisha Atkins, Benjamin E. Bates, Ebenezer T. Farrington, Thomas M. Weld, Henry Saltonstall, John Gardner, Thomas H. Perkins, and David D. Stackpole, greeting:

We command and strictly enjoin upon you that, laying all other matters aside, and notwithstanding any excuse, you, and each of you, be and personally appear before the judges of our circuit court of the United States in and for the eastern district of Arkansas, in chancery sitting, on the second day of November, A. D. eighteen hundred and seventy-four, it being the first Monday of November next, wheresoever the said court shall then be, and there to answer a bill of complaint exhibited against you in our said court by Charles W. Huntingdon, Samuel H. Gookin, trustees, &c., and to do further and receive what our said court shall have considered in that behalf, and this you are not to omit under penalty of what the law directs.

In testimony whereof Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, has caused the seal of said circuit court to be hereunto affixed this third day of October, A. D.
71 eighteen hundred and seventy-four, and in the ninety-ninth year of our Independance.

Attest:
[SEAL.] RALPH L. GOODRICH, *Clerk.*

N. B.—The defendants are required to enter their appearance in the above cause in the clerk's office of this court, on or before the second day of November, eighteen hundred and seventy-four, or the bill will be taken pro confesso against them.

RALPH L. GOODRICH, *Clerk.*

BOSTON, *October seventeenth, eighteen hundred and seventy-four.*

We, the undersigned, do hereby severally acknowledge service of the within subpœna, and submit the matters contained in said bill of complaint to the decision of the court without argument or further appearance on our part.

ELISHA ATKINS,
Trustee under Land Mortgage.
ELISHA ATKINS.
B. E. BATES.
E. T. FARRINGTON.
D. D. STACKPOLE.

UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Be it remembered that at a circuit court of the United States of America, in and for the eastern district of Arkansas, begun and holden on Monday, the twenty-sixth day of October, anno Domini one thousand eight hundred and seventy-four, at the United States court room in the city of Little Rock, Arkansas, the honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit, on November sixth, eighteen hundred and seventy-four:

Circuit court of the United States, eastern district of Arkansas. In equity.

72 C. W. HUNTINGDON AND S. H. GOOKIN, trustees, *vs.* LITTLE ROCK AND FORT SMITH RAILROAD Company et als. } No. 138.

And now on this sixth day of November, A. D. eighteen hundred and seventy-four, this cause came on to be heard on the original and amended bills and exhibits thereto. And upon the answers of John H. Haney and Henry Kyles, and exhibits thereto, and replications, and upon the bill taken as confessed against all the other defendants in the cause, and as argued by counsel, and thereupon on consideration thereof it is ordered, adjudged and decreed as follows, to wit, that the mortgage set forth in said bill of complaint was regularly executed for the purpose of securing the payment of three thousand five hundred bonds of one thousand dollars each, amounting to three million five hundred thousand dollars, and that the whole amount of said bonds has been issued, and with the interest thereon, in accordance with the terms thereof, are due and unpaid. And it is further ordered, adjudged and decreed that unless the said defendants or some of them, shall pay or cause to be paid to the *the* said plaintiffs, on or before the tenth day of December next, the aforesaid sum of three million five hundred thousand dollars, as a principal, together with all the interest which may be then due thereon, with the costs of this suit, the said mortgage shall be foreclosed, and that the said defendants, and each of them, shall thenceforth forever be barred from all equity of redemption under the said mortgage, and that all and singular the mortgaged premises mentioned in the said bill and exhibits thereto annexed, to wit, all and singular the railroad of the said the Little Rock and Fort Smith Railroad Company, or which the said company is by law authorized to construct from
73 the city of Little Rock, in the county of Pulaski, and State of Arkansas, to the city of Fort Smith, in the county of Sebastian, and State aforesaid, near the western boundary of said State of Arkansas, including all the railways, branches, ways, rights of way, all tracks, bridges, culverts, viaducts, fences, depots, station houses, engine houses, car houses, freight houses, wood houses, water stations, machine shops, and all other buildings and structures, with the lands appurtenant to the same, and all locomotives, tender*d*, cars, and other rolling stock or equipment, and all machinery, tools, implements, fuel, materials, and all other personal property of any nature, kind or description whatsoever, now held or acquired by the said company for use in connection with the railroads or branches of said company, with any

part thereof or with the business of the same; and also all the franchise connected with or relating to said railroad or branches, and all the franchises, immunities, privileges, rights and things of whatsoever name or nature now held by the said company, together with all and singular the tenements, hereditaments and appurtenances to the said railroad, branches, lands and premises, or either thereof belonging or in any wise appertaining; and the reversion and reversions, remainder and remainders, tolls, incomes, revenues, rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said company of, in, and to the same, and any and every part thereof, with the appurtenances, excepting and reserving, however, all the lands which heretofore have been granted to the said The Little Rock and Fort Smith Railroad Company by the Congress of the United States or by the State of Arkansas, and all such lands as heretofore have been given, granted or conveyed to said company in payment for subscriptions to its capital stock, or otherwise, all of which said lands, with the exception of the ways, rights of way, and real estate, hereinbefore particularly and specifically named or mentioned, are hereby reserved and excepted, as well as all other personal property of any and
74 every name whatsoever in said mortgage mentioned, be sold together in one parcel, and that Charles P. Redmond, of Little Rock, in said State of Arkansas, be, and hereby is, appointed special commissioner to execute the above order of sale, and that such sale be made by public auction at the door of the court house of the circuit court of the United States for the eastern district of Arkansas, on Thursday, the tenth day of December next, A. D. eighteen hundred and seventy-four, at ten o'clock in the forenoon, and that the time and place of such sale shall be publicly advertised by said special commissioner as follows, to wit, a written or printed notice specifying the time and place of said sale shall be posted up in three public places in the city of Little Rock; a copy of such notice shall be printed and published for three successive weeks at least three times in each week, previous to such sale, in the New York Herald, the Boston Daily Advertiser, the Boston Post, the Chicago Daily Tribune, and the Missouri Democrat, newspapers published respectively in the cities of New York, Boston, Chicago, and St. Louis, and at least once in each week in the Arkansas Daily Gazette and in the Little Rock Republican, newspapers published in the city of Little Rock aforesaid, which said notice shall describe as fully as the same is hereinbefore described the property to be sold. And it is further ordered, adjudged and decreed that upon such sale said special commissioner shall execute and deliver to the purchaser or purchasers of said mortgaged premises and property a deed or deeds of the premises and property so sold; and that the terms and conditions of said sale shall be as follows, viz, that the purchaser or purchasers be required to pay, upon the acceptance of his or their bid, ten per centum upon the amount of said bid in cash, and that the remaining ninety per centum be paid or secured, upon the execution of said deed or deeds, by a deposit by the purchaser of the bonds of the United States Government of equal amount with said sum of ninety per cent. of
75 said bid, in the office of said special master, the said ninety per cent. of said bid to be paid into court at any time when required by the court and within thirty days after such requirement shall be made by an order of record to be entered in this cause, the said sum of ninety per cent. to bear interest at the rate of six per centum per annum from the date of said sale until the same shall be paid; one con-

dition of said sale being also that unless the said purchaser shall pay said deferred money within thirty days after requirement shall have been made as aforesaid, the said government bonds deposited as aforesaid shall be sold or converted into money in such manner as in the judgment of the court shall *be sol* to the best advantages of parties having rights in said funds to be derived from said sale, and it is further considered and decreed that all the bonds secured by the said deed of trust shall be filed in the office of said master for participation in said fund in accordance with a scheme to be devised for that purpose, and reference is hereby made to said master to report a plan to notify all bondholders of the pendency and object of this proceeding and the manner in which the validity of said bonds shall be presented and passed upon in his office. And it is further ordered that said Charles P. Redmond, esquire, be, and is hereby, appointed special master herein.

HENRY C. CALDWELL, *Judge.*

And on December nineteenth, eighteen hundred and seventy four, as follows:

UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Be it remembered, that at a term of the circuit court of the United States of America, in and for the eastern district of Arkansas, begun and holden on Monday, the twenty-sixth day of October, anno Domini one thousand eight hundred and seventy-four, at the United
76 States court room in the city of Little Rock, Arkansas, the honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had on December nineteenth, A. D. eighteen hundred and seventy-four, to wit:

CHARLES W. HUNTINGDON AND SAMUEL H. Gookin, trustees, *vs.* THE LITTLE ROCK AND FORT SMITH RAILROAD Company, et al. } No. 138.

And now, on this nineteenth day of December, A. D. eighteen hundred and seventy-four, Charles P. Redmond, who was appointed special commissioner and special master under the decree rendered in this cause on the sixth day of November last past, personally appeared, and submitted and filed a report of his acts and doings under and by virtue of said decree, and George O. Shattuck, Francis M. Weld, and George Ripley, the purchasers of the property sold under said decree, being severally personally present, declare and state in open court and desire the same to be entered of record, that it is their intention, immediately upon the confirmation by this court of the aforesaid sale, to organize a corporation under an act of the general assembly of the State of Arkansas, approved December ninth, eighteen hundred and seventy-four, entitled "An act supplementary to an act entitled 'An act to provide for a general system of railroad incorporation, approved July twenty-third, eighteen hundred and sixty-eight,'" which corporation shall own, hold, and manage the property conveyed under the aforesaid sale as well as the lands and property conveyed or to be conveyed under the sale held by virtue of the decree rendered on the sixth day of November last past, in the suit of Charles W. Huntingdon, Samuel H. Gookin, and Elisha Atkins, trustees, vs. The Little Rock and Fort Smith
77 Railroad Company et als., No. 139 upon the docket of this

court, and that any holder of the bonds, secured by the mortgage foreclosed by this suit, as well as of the bonds secured by the mortgage foreclosed by the aforesaid suit numbered one hundred and thirty-nine, shall upon the transfer of his bonds and his right to any of the proceeds of the sales of the railroad or land grant, under the aforesaid decrees in said suits, numbered one hundred and thirty-eight and one hundred and thirty-nine, within sixty days from the date of such organization, unless further time shall be given by the court, be entitled to his proportional interest in the stock of said new corporation, upon the same terms and stipulations as any other holder of said bonds; but this shall not prevent such new corporation from requiring from any and all holders of said bonds the payment of his proportion of the expenses attending said sales and purchases, and such other sums not exceeding five per cent. on the principal of said bonds as said corporation may deem it for its interests to require as a condition upon which said stock shall be delivered, provided that the same requirement be made of all the other holders of said bonds, and provided further, that this stipulation shall not limit the power of the aforesaid Shattuck, Weld, and Ripley to organize said corporation without notice, or of the corporation so organized to mortgage its property or to reserve for its own use an amount of its capital stock not exceeding ten per cent. thereof.

And the aforesaid Huntingdon, Gookin and Atkins, trustees, being severally personally present, state in open court that they do not object, but consent to the confirmation of the sales held under and by virtue of the aforesaid decrees rendered in this suit and in the suit numbered one hundred and thirty-nine, upon the agreement that the aforesaid stipulations or the substance thereof be embodied in the decrees approving and confirming said sales.

Whereupon, after due deliberation it is ordered, adjudged and
78 decreed, that the aforesaid sale to the aforesaid Shattuck, Weld and Ripley, under the aforesaid decree rendered in this suit numbered one hundred and thirty-eight, be and the same is hereby approved, ratified and confirmed upon the stipulation that the said Shattuck, Weld and Ripley immediately proceed to organize a corporation under an act of the general assembly of the State of Arkansas, approved December ninth, eighteen hundred and seventy-four, entitled "An act supplementary to an act entitled 'An act to provide for a general system of railroad incorporation, approved July twenty-third, eighteen hundred and sixty-eight,'" which said corporation shall own, hold and manage the property conveyed under the aforesaid sale, as well as the lands and property to be conveyed under the sale held by virtue of the decree rendered on the sixth day of November last past, in the suit of Charles W. Huntingdon, Elisha Atkins and Samuel H. Gookin, trustees, vs The Little Rock and Fort Smith Railroad Company et als., No. one hundred and thirty-nine upon the docket of this court, and that any holder of the bonds secured by the mortgage foreclosed by this suit, as well as the bonds secured by the mortgage foreclosed by the aforesaid suit numbered one hundred and thirty-nine, shall upon the transfer of his bonds and his right to any of the proceeds of the sales of the railroad or land grant, under the aforesaid decrees in said suits numbered one hundred and thirty-eight and one hundred and thirty-nine, within sixty days from the date of such organization, unless further time be given by this court, be entitled to his proportional interest in the stock of said new corporation, upon the same terms as any other holder of said bonds, but this shall not prevent such new corporation from requiring from any and all holders of said bonds the payment of his proportion of the

expenses attending said sales and purchases, and of such other sums not exceeding five per cent. on the principal of said bonds as said corporation may deem it for its interest to require as a condition upon which said stock shall be delivered, provided that the same re-
79 quirement shall be made of all the other holders of said bonds, and provided further, that this stipulation shall not limit the power of the aforesaid Shattuck, Weld, and Ripley to organize said corporation without notice, or of the corporation so organized to mortgage its property or to preserve for its own use an amount of its capital stock not exceeding ten per cent. thereof.

HENRY C. CALDWELL, *Judge.*

It is agreed that subsequently to the amendment of the plaintiffs' bill of complaint, in Oct., 1874, viz, during the week preceding the October term of said circuit court, a hearing was had before Judge Dillon, at Des Moines, Iowa, upon the application of the plaintiffs Huntington and Gookin, for the appointment of receivers, with power to issue debentures for the purpose of completing said railroad, in accordance with the prayer of said bill of complaint as amended. That the further hearing upon said application was postponed to await the action of the district judge upon the final hearing of said cause at the October term of said court, and said application was not again renewed.

C. W. HUNTINGTON,
For Appellees.
B. C. BROWN,
For Appellants.

80 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

I, Ralph L. Goodrich, clerk of the circuit court of the United States for the eastern district of Arkansas, in the eighth circuit, hereby certify that the foregoing writings annexed to this certificate are true, correct and compared copies of their originals, on file and remaining of record in my office.

In witness whereof I have hereunto set my hand and the seal of said court this 11th day of August, in the year of our Lord one thousand eight hundred and seventy six, and of the Independence of the United States of America the one hundred & first.

Attest:
[SEAL.] RALPH L. GOODRICH, *Clerk.*

(Indorsement on cover:) No. 159. Frank Shaw and David S. Greenough, jr., appellants, vs. The Little Rock and Fort Smith Railway, The Little Rock and Fort Smith Railroad Company, Charles W. Huntington and Samuel H. Gookin. E. Arkansas C. C. U. S. Filed August 4, 1877.